(22,374)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 424.

THE OREGON RAILROAD & NAVIGATION COMPANY, A CORPORATION, APPELLANT,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHINSON, OSWALD WEST, AND A. M. CRAWFORD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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1 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, a Corporation, Complainant & Appellant,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants and Appellees.

Citation on Appeal.

The President of the United States of America to Thomas K. Campbell, Clyde B. Atchison, Oswald West, and A. M. Crawford, and to each and all of you, Greeting:

You, and each and all of you, are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, District of Columbia, within sixty days from the date of this writ, to-wit, on the 1st day of November, A. D. 1910, pursuant to a notice of appeal and order of the court allowing the same, filed in the Clerk's office of the Circuit Court of the United States for the District of Oregon, wherein The Oregon Railroad & Navigation Company is complainant, and now appellant, and you are defend-

2 ants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant and appellant, as in said notice of appeal and order allowing the same mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John Marshall Harlan, Associate Justice of the Supreme Court of the United States of America, in the vacancy in the office of Chief Justice of the United States of America, he being the Associate Justice next in precedence, this 2nd day of September, 1910.

CHAS. E. WOLVERTON,
United States District Judge Presiding in, and Judge of, the Above Entitled Circuit Court of the United States for the District of Oregon.

Due and personal service of the above citation, and receipt of a copy thereof, is hereby admitted this 2nd day of September, 1910.

A. B. WINFREE,
Of Solicitors for Defendants and Appellees, Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford.

3 [Endorsed:] No. —. In the Circuit Court of the United States for the — District of Oregon. The Oregon R. R. &

Nav. Co., Complainant, vs. Thos. K. Campbell et al., Defendants. Citation. Filed Sep. 2, 1910. G. H. Marsh, Clerk, by J. W. Marsh, Deputy.

4 In the Circuit Court of the United States for the District of Oregon, April Term, 1908.

Be it remembered, That on the 11th day of May, 1908, there was duly filed in the Circuit Court of the United States for the District of Oregon, a bill of complaint, in words and figures as follows, to wit:

5 In the Circuit Court of the United States for the District of Oregon.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

Bill of Complaint.

To the Honorable the Judges of the United States for the District of Oregon:

Your orator, The Oregon Railroad & Navigation Company, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said State, brings this its bill of complaint against Thomas K. Campbell, Clyde B. Aitchison, Oswald West and A. M. Crawford, each of whom is a citizen and a resident of the State of Oregon, and residing within the district of Oregon and within the jurisdiction of this court, and thereupon your orator shows and avers.

I.

Your orator, The Oregon Railroad & Navigation Company, is now and at all time- herein named was, a corporation organized under the laws of the State of Oregon, and a citizen and resident of said State, and has power by the terms of its articles of incorporation, among other things, to construct, acquire, equip and operate railroad and telegraph lines within the State of Oregon, Washington and Idaho, and has been and is now the owner of and engaged in operating and maintaining lines of railroad in the States of Oregon, Washington and Idaho, extending from Portland, Oregon, to Huntington, Oregon, and from Umatilla, Oregon and Pendleton,
6 Oregon to Spokane, Washington and Wallace, Idaho, together with various branch lines of railroad in the said States, and is now and at all times hereinafter mentioned has been engaged in operating said lines of railroad as a common carrier of freight and passengers for hire, carrying thereon and thereover both intra-state

and interstate traffic. Among said branches so owned and operated are the line of railroad extending from La Grande, in the State of Oregon, to Joseph in said State, and the line of railroad extending from Heppner Junction, Oregon, to Heppner in said State, and your orator also leases and operates a line of railroad extending from Pendleton, Oregon, to Pilot Rock in said State, and a line of railroad from Biggs, Oregon, to Shaniko in said State, and a line of railroad from Arlington, Oregon, to Condon in said State. Each and all of said owned or leased branches have their junction points with the main line of your orator's railroad at points and places lying east of The Dalles in the State of Oregon, and all of said branches are east of The Dalles. The principal business of your orator consists in interstate commerce; and it is a carrier of such commerce, subject, as to such commerce, as your orator is advised and believes, to the sole and exclusive supervision and control of the United States. Of the total business of your orator less than twenty per cent. is local within the State of Oregon.

II.

The defendant A. M. Crawford is the Attorney General of the State of Oregon, duly elected, qualified and acting as such as provided by the constitution and laws of the said State, and is now and at all times hereinafter mentioned has been a citizen and resident of the State of Oregon and residing within the said State and within the jurisdiction of this court. The defendants Thomas K. Campbell, Clyde B. Aitchison and Oswald West are members of the Railroad Commission of Oregon, having been appointed as such
7 members under an act of the legislature of the State of Oregon hereinafter referred to, and each of them now is and at all times hereinafter mentioned has been a citizen and resident of the State of Oregon and residing in the district of Oregon and within the jurisdiction of this court.

III.

Heretofore, and at the regular legislative session held in the year 1907, the legislative assembly of the State of Oregon undertook to pass an act entitled "An Act to regulate transportation and commerce, and common carriers thereof in this State, and for that purpose, to create a Railroad Commission of Oregon, to provide for the appointment and election thereof, to fix the qualifications, salaries, powers and duties of said commission, and the members thereof, and authorizing them to make and alter their rules and regulations, and to provide for demurrage, and reciprocal demurrage, and for penalties for failure to furnish cars, and to regulate the mode and manner of establishing, making and maintaining railroad crossings and connection, and to prevent unjust rates being imposed, and unjust discrimination by the carriers subject to this Act, and to insure adequate service by them, prescribing penalties for the violation of the provisions of this Act, prescribing the procedure and rules of evidence in relation thereto, making an appropriation to carry out the provisions hereof, and repealing so much of Section

5095, of the Codes and Statutes of Oregon, compiled and annotated by Hon. Charles B. Bellinger and William W. Cotton, as is inconsistent with the provisions of this Act, and declaring an emergency," a copy of which said act is hereto annexed marked Exhibit "A" and made a part hereof, and your orator prays that said act may be taken as part of this bill as fully as though embodied herein. Said act will hereafter be referred to, for convenience, as the Railroad Commission Act.

8

IV.

Undertaking to act pursuant to the terms of the Railroad Commission Act, the Governor, Secretary of State and State Treasurer of the State of Oregon attempted to appoint the defendants Thomas K. Campbell, Clyde B. Aitchison and Oswald West as members of the Railroad Commission of Oregon, referred to in the said State commission act, and the said defendants Campbell, Aitchison and West are now and have at all times hereinafter mentioned been attempting to act as the Railroad Commission of Oregon attempted to be created by the said Railroad Commission Act.

V.

A. M. Crawford, one of the defendants herein, was heretofore duly elected, and thereafter duly qualified as Attorney General of the State of Oregon, and is now acting as such.

By the terms of Section 57 of the Oregon Commission Act hereinbefore referred to, it is provided as follows:

"SECTION 57. The commission shall inquire into any neglect or violation of the laws of this State by any railroad corporation doing business therein, or by the officers, agent-, or employés thereof, of by any person operating a railroad and shall have the power, and it shall be its duty, to enforce the provisions of this Act as well as all other laws relating to railroads and report all violations thereof to the Attorney General; upon the request of the commission it shall be the duty of the Attorney General or the prosecuting attorney of the proper county to aid in any investigation hearing or trial had under the provisions of this Act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this Act or the recovery of penalties payable to the State, and of all other laws of this State relating to railroads, and for the punishment of all violations hereof. Any forfeiture or penalty herein provided shall be recovered by an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction. The commission shall have authority to employ special counsel in any proceeding, investigation, hearing or trial, and to fix their compensation."

VI.

This is a suit arising under the constitution of the United States and the laws passed pursuant thereof, for that your orator seeks, among other things, to enjoin the said defendants Campbell,

9 Aitchison and West, acting as the Railroad Commission of Oregon, and the said Crawford, Attorney General of Oregon,

and each of them, from attempting in any manner to enforce the provisions of a certain pretended order hereinafter mentioned and particularly described, and relating to rates and charges for transportation of freight on the railroad of your orator, and from instituting any action, suit or proceeding against your orator and its officers, directors, agents, servants or employés on account of any violation of any of the terms or provisions of the said pretended order, or from attempting to enforce in any manner the provisions of the said Railroad Commission Act against your orator, or any of its officers, agents or employés on account of any violation thereof, for the reason that the said act and the said order, and each of them, and all the tariffs, rates, charges and regulations assumed to be prescribed by said order are in violation of the constitution of the United States, and are likewise in violation of an act of Congress approved February 4th, 1887, entitled "An Act to regulate commerce," and of the various acts amendatory thereof and supplemental thereto.

The revenue of your orator derived from the transportation of freight which is interstate in character is large, and the portion thereof affected by the said pretended order of the Railroad Commission of Oregon, if such order be enforced and the rates therein mentioned be put into effect, will largely exceed the sum of two thousand dollars, exclusive of interest and costs, and the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of two thousand dollars.

VII.

The Union Pacific Railroad Company owns and operates a line of railroad extending from Union Pacific Transfer, in Council Bluffs, Iowa, to Granger in the State of Wyoming, and the Oregon Short Line Railroad Company owns and operates a line of railroad extending from Granger in the State of Wyoming to Huntington in the State of Oregon, and extending from Union Pacific Transfer east to Chicago, and having physical connections with the line of the Union Pacific Railroad Company are various lines of railroad owned and operated by the Chicago Northwestern Railroad Company, the Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company. At Granger, Wyoming, there is a physical connection between the line of the Union Pacific Railroad Company and that of the Oregon Short Line Railroad Company, and at Huntington, Oregon, there is a physical connection between the line of the Oregon Short Line Railroad Company and that of your orator. Because of such physical connections and of the through tariffs published and established by the various companies parties thereto, merchandise and commodities of all kinds have moved from Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, St. Louis and points and places located upon and east of the Missouri River to Portland, in the State of Oregon, and to places east of The Dalles, in the State of Oregon, reached by the lines of railroad operated by your orator.

VIII.

Heretofore the Union Pacific Railroad Company, the Oregon Short Line Railroad Company and The Oregon Railroad & Navigation Company issued a tariff covering the transportation of freight between Chicago, Milwaukee, Duluth, Minneapolis, Peoria, St. Louis, Missouri River and common points to various stations in Oregon on the lines of your orator east of The Dalles, other than the station at Pendleton, and duly published said tariff and filed the same with the Interstate Commerce Commission as required by the act of Congress approved February 4th, 1887, entitled "An Act to regulate
11 commerce" and the various acts amendatory thereof and supplemental thereto. The said tariff is numbered U. P. R. R. I. C. C. No. 1578, and the same was concurred in by all the lines of railroad hereinbefore mentioned, and your orator and the other lines of railroad hereinbefore mentioned have been transporting merchandise from and after January 2nd, 1904, in accordance with the rates and conditions therein set forth, excepting in so far as said tariff has been amended by supplements issued thereto, and which were in each instance concurred in by the lines of railroad hereinbefore mentioned. The said tariff contains a list of the common points hereinbefore referred to, and there is attached to this bill a copy of the said tariff marked Exhibit "B," together with three supplements thereof, and which have been duly issued and filed with the Interstate Commerce Commission as required by law, and which are marked respectively Exhibits "C," "D" and "E," and which are by this reference made a part of this bill, and your orator prays that the same may be taken as though fully embodied herein, and for convenience said tariff and the supplements thereto will hereafter be referred to as Union Pacific Tariff I. C. C. No. 1578.

IX.

Heretofore the Union Pacific Railroad Company, the Oregon Short Line Railroad Company and The Oregon Railroad & Navigation Company and the various other companies whose names appear thereon, promulgated a tariff naming class and commodity rates on merchandise and commodities effective January 18, 1904, from New York and common points, Pittsburg and common points, Cincinnati and common points, Chicago and common points, Mississippi River common points, and Missouri River common points to certain north Pacific coast terminals, including Portland, Oregon. Said tariff was concurred in by all of the lines of railroad parties thereto and was duly filed with the Interstate Commerce
12 Commission. Said tariff names rates to no point or place on the lines of your orator's railroad east of Montavilla, Oregon. Your orator and other lines of railroad parties to said tariff have been transporting large quantities of merchandise and commodities in accordance with the rates and conditions set forth in the said tariff, excepting in so far as said tariff has been amended by supplements thereto, and which were in each instance concurred in by the lines of railroad parties to the said tariff. There is attached to

this bill a copy of said tariff marked Exhibit "F," together with one supplement thereto marked Exhibit "G," and which are by this reference made a part of this bill, and your orator prays that the same may be taken as though fully embodied herein. Said tariff bears the Trans-Continental Freight Bureau number 4C and will hereafter, for convenience, be referred to as the Trans-Continental Terminal Tariff.

X.

Said tariff Union Pacific I. C. C. No. 1578 and said Trans-Continental Terminal Tariff, and each of them, were duly published and filed with the Interstate Commerce Commission, and the said supplements thereto were likewise duly published and filed with the Interstate Commerce Commission, and the rates made and established by the said tariffs, and each of them, and the supplements thereto, are the rates now in force and effect between the points and places mentioned in the said tariffs, and are the only lawful rates which your orator and the other carriers parties to the said tariff can charge between the points and places mentioned in said tariffs and supplements thereto, and each of them.

XI.

At the present time your orator has in effect upon the lines of its railroad a freight tariff naming class and commodity rates
13 based upon the existing western classification between Portland, East Portland, Albina and St. Johns, Oregon, and all points and stations on the lines of your orator in Oregon, Washington and Idaho, said tariff being effective January 1st, 1907, and bearing numbers as follows: No. L 525, I. C. C. No. 1146. Said tariff will hereafter for convenience be referred to as L 525. A copy thereof is hereto attached marked Exhibit "H" and by this reference made a part of this bill, and your orator prays that the same may be taken as though fully embodied herein. Said tariff was duly published and filed with the Interstate Commerce Commission and with the Railroad Commission of Oregon, and is now and ever since January 1st, 1907, has been, in full force and effect. After making, publishing and filing said tariff L 525, various supplements amendatory thereto were likewise duly published and duly filed with the Interstate Commerce Commission and the Railroad Commission of Oregon, and the class and commodity rates fixed and established by the said tariff L 525 and the supplements thereto are the rates now lawfully in force between Portland, East Portland, Albina, and St. Johns, Oregon, and all points in Oregon, Washington and Idaho on the line of your orator's railroad, and are the only rates which your orator at this time is authorized to charge for the transportation of freight described in said tariff between Portland, East Portland, Albina and St. Johns and various points in Oregon, Washington and Idaho, east of The Dalles, Oregon, and are reasonable rates.

XII.

The San Francisco & Portland Steamship Company is a corporation operating a line of steamships engaged in the transportation of freight between San Francisco, California, and Portland, Oregon. Your orator and the San Francisco & Portland Steamship Company have heretofore issued a joint freight tariff setting forth the rates on freight to be charged from San Francisco, California, to
14 points and places on your orator's lines in Oregon east of The Dalles, and said tariff was heretofore duly published and duly filed with the Interstate Commerce Commission, the same bearing the number O. R. & N., I. C. C. No. 967. And the companies, parties to said tariff, have duly published, and duly filed with the Interstate Commerce Commission five supplements to said tariff, marked respectively, "Supplement No. 5," "Supplement No. 7," "Supplement No. 8," "Supplement No. 10" and "A supplement amending the diverting and re-consignment rule." There is attached to this bill a copy of said tariff, and said supplements, all of which are marked Exhibit "N," and by this reference made a part of this bill, and your orator prays that the same may be taken as though fully embodied herein.

Since the first day of June, 1905, the San Francisco & Portland Steamship Company and your orator have been engaged in transporting merchandise between San Francisco, California, and points on the lines of your orator east of The Dalles, at the rates and under the conditions named in the said tariff, and the said tariff is now in full force and effect, and your orator and the San Francisco & Portland Steamship line constitute a through route, making through rates under a common management and control for the transportation of such freight between said points, under the Act of Congress entitled "An Act to Regulate Commerce," and the Acts amendatory thereof, and are subject, as such through route, to said Act and to the jurisdiction of the Interstate Commerce Commission created by the said Act, and the rates therein named are the only rates which your orator and the San Francisco & Portland Steamship Company can lawfully charge on such traffic, and are reasonable rates. The rates so fixed and established by the said tariff are made by
15 adding certain arbitraries or local rates to the rates fixed and established by tariff No. L 525 from Portland to various points and places in Oregon east of The Dalles.

XIII.

The Southern Pacific Company is engaged in operating a line of railroad extending from San Francisco, California, to Portland, Oregon, and the same has a physical connection with the railroad of your orator at Portland. Heretofore said Southern Pacific and your orator issued a joint tariff covering the rates and conditions under which merchandise and commodities would be transported from San Francisco, California, and other points and places in California reached by the line operated by the Southern Pacific Company, to Portland, Oregon, and to all points in Oregon east of The

Dalles on your orator's lines. Said tariff was duly published and duly filed with the Interstate Commerce Commission and became effective on the 16th day of July, 1904, and is numbered Southern Pacific I. C. C. No. 2130, and on and after the said 16th day of July, 1904, the Southern Pacific Company and your orator have transported merchandise from San Francisco and other points and places in California to Portland, Oregon, and points east of The Dalles in Oregon under said tariff, and the same constitutes interstate commerce. The said through rates from California to points east of The Dalles consist mainly of a combination of the rates fixed by tariff No. L 525 from Portland to such points east of The Dalles and certain arbitraries, or local rates, and are reasonable rates.

Your orator, at this time, is unable to obtain a copy of said tariffs and the supplements thereto, and is unable to attach a copy thereof to this bill as part thereof, but prays reference to the said tariff and the supplements thereto, as fully as though the same was embodied herein as a part hereof.

16 XIV.

Heretofore, and under date of April 22, 1908, the Railroad Commission of Oregon, assuming to act under and by virtue of the provisions of the Railroad Commission Act hereinbefore mentioned, did make an order in a proceeding commenced before said Railroad Commission of Oregon, by the Portland Chamber of Commerce against your orator, a copy of which order is hereto attached, marked "Exhibit I", and is by this reference made a part hereof, and your orator prays that said order may be taken as a part of this bill, as fully as though embodied herein. Said order was served upon your orator on the 23rd day of April, 1908. In and by said order it was, among other things, declared and found by said Railroad Commission of Oregon, that the class rates now in effect under your orator's said freight tariff No. L 525, with the supplements amendatory thereto, over and on your orator's main, branch, leased, and otherwise controlled railroad lines within the state of Oregon between the City of Portland and all points within Oregon on the lines of your orator's railroad east of The Dalles in said State, are unjust and unreasonably high, and it was ordered that your orator should cease and desist from charging any higher rates within the State of Oregon, for the transportation of merchandise and other commodities, between the City of Portland and points on your orator's main, branch, leased, or otherwise controlled railroad lines within Oregon, covered by the class rates in said tariff No. L 525, than the class rates prescribed by said order, and that, in lieu of said class rates established by said tariff No. L 525, your orator should substitute the class rates specified in said order, which were to all points east of The Dalles, greatly less than the rates established to the same point by tariff No. L 525.

Said order also prescribed that the rates so prescribed by the
17 Railroad Commission of Oregon, should be effective from and after twenty days after the service of a copy of the said order on your orator, and your orator was by said order required to prepare and file, within twenty days after the service of said order, new

tariffs, publishing and establishing the rates so attempted to be prescribed in said order by the Railroad Commission of Oregon.

XV.

At least seventy percent of the freight carried, and which will hereafter be carried from Portland to points on your orator's lines in Oregon east of The Dalles, under the class rates established and fixed by tariff No. L 525, originates, and will originate, at points along, or east of, the Missouri River or in California, and was and will be first transported from said eastern points, or from California, to Portland before it is, or will be, transported from Portland, under the class rates established by tariff No. L 525, or under the class rates undertaken to be established by said pretended order of the said Railroad Commission of Oregon, and large quantities of like kind of freight are transported directly from the east to points in Oregon east of The Dalles by your orator and the lines connecting therewith, at and under the rates fixed by Union Pacific tariff I. C. C. No. 1578, and are transported from points in California to points in Oregon east of The Dalles by your orator and the San Francisco & Portland Steamship Company, and by your orator and the Southern Pacific Company, at the rates fixed and established by the tariffs in force from California to points east of The Dalles, as hereinbefore alleged.

In Union Pacific tariff I. C. C. No. 1578, it is provided, among other things, that where the rate to or from the point of shipment to Portland added to the local rate from Portland to any
18 point in eastern Oregon, east of The Dalles, fixed and established by said tariff No. L 525, is lower than the rate to the same point shown by said tariff, Union Pacific I. C. C. No. 1578, then the combination of such trans-continental rate and the local rate will govern. The rates fixed and established by said Union Pacific tariff I. C. C. No. 1578, applying to points and places on the lines of your orator's railroads in Oregon east of The Dalles, and particularly the class rates so established by said tariff, are generally more than the rate made by adding to the terminal rate to Portland fixed and established by the trans-continental terminal tariff, the class rates from Portland to the local Oregon destination fixed and established by said tariff No. L 525, and the commodity rates fixed by said Union Pacific tariff I. C. C. No. 1578, are generally somewhat less than the combination of the trans-continental terminal rate to Portland and the rate fixed and established by tariff No. L 525, from Portland to point of destination east of The Dalles, and are reasonable rates, but such commodity rates so fixed by said Union Pacific tariff I. C. C. No. 1578, are greater than the combination of the rate fixed by the trans-continental terminal tariff from the point of shipment to Portland, and the rates undertaken to be established by the Railroad Commission of Oregon from Portland to the points east of The Dalles, by the said order hereto attached marked Exhibit "I."

XVI.

For the purpose of illustrating the effect of the order Exhibit "I," upon the traffic of an interstate character, passing over the lines of railroad operated by your orator, your orator presents a table showing the rates specified in Union Pacific tariff I. C. C. No. 1578, on some commodities mentioned in said tariff, from Chicago and common points to La Grande and Baker City, Oregon, and also the rates which a shipper would pay for a transportation of the same commodity from Chicago and common points to La Grande and Baker City, provided such shipper caused his goods to be first transported to Portland at the rate fixed by the trans-continental terminal tariff, and then caused said goods to be re-shipped from Portland to destination under the rates attempted to be fixed and established by the Railroad Commission of Oregon in said order, Exhibit "I." In said table the figures under the words "present rate" are the rates fixed and established by Union Pacific tariff I. C. C. No. 1578, under direct shipment from Chicago and Common points to La Grande and Baker City, and the figures under the words "combined rate" are the rates which a shipper would pay by shipping his goods from Chicago and common points first to Portland and then re-shipping then to destination. The following is the table hereinbefore mentioned:

Commodities.	From Chicago and common points to—			
	La Grande.		Baker City.	
	Present rate.	Combined rate.	Present rate.	Combined rate.
Bottles, (Glass) Common, (Glass) Common in Demijohns, Flasks, (Glass) Common in Boxes, Barrels or Crates, Str. or Mxd. C. L...	1.48	1.43	1.48	1.44
Coffee, Green, C. L.	1.52	1.48	1.52	1.49
Jars and Glasses, Fruit or Jelly, C. L.....	1.49	1.43	1.50	1.44
Matches, C. L.....	1.79	1.69	1.79	1.70

It thus appears that if the rates attempted to be fixed by the Railroad Commission of Oregon, from Portland to points east of The Dalles by said order Exhibit "I", should go into effect, then your orator and the other companies concurring in Union Pacific tariff I. C. C. No. 1578, would have to reduce the rates so fixed and established by said tariff, or otherwise, all direct shipments of merchandise from Missouri River or common points and points east, to points in Oregon east of The Dalles, would cease, and such freight would first be transported to Portland and then re-shipped to destination.

XVII.

As a further example of the effect which the enforcement of said order Exhibit "I" would have upon the rates and tariffs now charged

by your orator in connection with other carriers for the carriage of freight between the several states, your orator shows that the rates now in force and effect, and as shown by published tariffs of your orator and the San Francisco & Portland Steamship Company, jointly issued and filed with the Interstate Commerce Commission, are made by adding to the rates in force and effect by virtue of tariff No. L 525, from Portland to Baker City, La Grande, and other points east of The Dalles, certain arbitraries or local rates, which taken together form the through rate from San Francisco to such points and places in Eastern Oregon. Said rates from San Francisco to such points are generally less than the combination of the local rate from San Francisco to Portland, and the local rate from Portland to destination, but such rates would be generally higher than the combination of the local rate from San Francisco to Portland and the rates attempted to be established by the said order Exhibit "I" from Portland to destination.

The following table of commodities, selected as being representative in character, show the through rates in effect at the present time, from San Francisco, California to La Grande and Baker City, Oregon, via the lines of your orator and the steamship line of the San Francisco & Portland Steamship Company, and the rate which would result from a combination of the local rate from San Francisco to Portland and the local rate from Portland to destination,
21 attempted to be established by the said Railroad Commission of Oregon by its order Exhibit "I".

The figures under the words "present rate" are the present through rates upon the commodities indicated and the figures under the words "combined rate" are the rates upon the same commodities resulting from the combination of the local rates by way of Portland:

Commodities.	From San Francisco, California, to—			
	La Grande.		Baker City.	
	Present rate.	Combined rate.	Present rate.	Combined rate.
Canned Goods, C. L.	.79	.78	.80	.79
Coffee, Green, C. L.	.79	.75½	.80	.76½
Dried Fruits, C. L.	.95	.94	.95	.95
Hardware, any quantity subject to second class rates	1.34	1.23	1.40	1.24
Sugar, C. L.	.76½	.73	.77½	.74

As a further example of the effect which the enforcement of said order, Exhibit "I", would have upon the rates now charged by your orator, in connection with other carriers upon freight transported between other states, your orator shows that the rates in force and effect and as shown by the published tariffs of your orator and the Southern Pacific Company, jointly issued and filed with the Interstate Commerce Commission, are made by adding to the rates in force and effect under tariff L. 525, from Portland, Oregon, to Baker City, La Grande, and other points in Oregon east of The

Dalles, certain arbitraries or local rates which, taken together, form the through rate from San Francisco to such points and places. Such rates are generally less than the combination of the local rate from San Francisco to Portland and the local rate from Portland
22 to destination, but such rates would be generally higher than the combination of the local rate from San Francisco to Portland and the rates attempted to be established by the said order, "Exhibit "I" from Portland to destination.

The following table of commodities, selected as being representative in character, shows the through rates in force at the present time, and the rates which would result from the combination of the local rate from San Francisco to Portland and the rate from Portland to destination attempted to be established by said Railroad Commission of Oregon by its order, Exhibit "I". The figures under the words "present rate" are the through rates upon commodities indicated, from San Francisco to La Grande and Baker City respectively, and the figures under the words "combined rate" are the rates which would result from combining the locals from San Francisco to Portland and from Portland to destination, to wit:

Commodities.	From San Francisco, California, to—			
	La Grande.		Baker City.	
	Present rate.	Combined rate.	Present rate.	Combined rate.
Canned Goods, C. L.	.82	.76	.83	.77
Coffee, Green, C. L.	.82	.76	.83	.77
Dried Fruits, C. L.	.98	.87	.98	.88
Hardware (Less carloads) taking 2d class rates	1.40	1.24	1.46	1.25
Do. (Car loads)	1.37	1.21	1.43	1.22
Sugar, C. L.	.79½	.73½	.80½	.74½

And so it is, that if such rates so undertaken to be established by said order, Exhibit "I" should not be enjoined, and should go into effect, your orator and other carriers engaged in carrying interstate traffic from points in California to points in Oregon east of
23 The Dalles, would have to reduce rates now in force from California to such eastern Oregon points, or otherwise, all interstate shipments from California to such eastern Oregon points would cease, and all such freight would be shipped from California to Portland, and thence shipped locally from Portland to destination.

XVIII.

Should said order, Exhibit "I" be put in force, and effect and be not enjoined, not only would the interstate rates hereinbefore specifically mentioned for the purpose of illustration, be affected, but each and every other interstate rate now in force and effect from Missouri River common points, and points east thereof, to points in Oregon east of The Dalles, and from California points to points in Oregon east of The Dalles, contained and set forth in the tariffs

hereinbefore mentioned, would likewise be affected, and the said order, Exhibit "I" necessarily amounts to an attempted regulation by the said Oregon Railroad Commission, of commerce between the several States, and is an infringement upon the exclusive power of Congress over such interstate commerce, and power over such commerce of the commission created by the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce".

XIX.

By the terms of said order, Exhibit "I", it is provided that your orator shall put in effect rates therein mentioned, within twenty days from the date of service of such order upon your orator, and the said period of twenty days will have expired on the 13th day of May, 1908. By the terms of the Act of Congress, approved February 4, 1887, entitled "An Act to Regulate Commerce", and the various Acts amendatory thereof, and by the regulations promulgated by the Interstate Commerce Commission created by said Act of
24 Congress, pursuant to the power vested in said Commission by said Act of Congress, no interstate rate contained in any of the interstate tariffs hereinbefore mentioned, can be changed without giving of thirty days' notice, and necessarily, should your orator attempt to comply with the terms and conditions of said order, Exhibit "I", it would be compelled to violate the said Act of Congress and regulations promulgated by the said Interstate Commerce Commission, and in this particular, the said order Exhibit "I" is an attempt to regulate interstate commerce, and is void.

XX.

Tariff No. L 525 establishes rates from Portland, Oregon, to all points on the lines of your orator in Oregon, Washington, and Idaho, and the movement of traffic under such tariffs from Portland to points in Washington and Idaho is large and the revenue derived by your orator from the carriage of such traffic, is great. The rates established by said tariffs No. L 525 are lower than the rates established for the transportation of similar traffic from any point on your orator's lines other than Portland to any other point on your orator's lines in Oregon, Washington, or Idaho, and the rates established by said tariff No. 525, from Portland to points east of The Dalles, are lower than the rates charged by any other railroad company in Oregon, Washington, or Idaho, for the transportation of similar traffic for the same distance. The rates attempted to be established by the said order, Exhibit "I" are lower than the rates fixed and established by said tariff No. L 525, and are unreasonably low, and are unjust to your orator. While the immediate effect of such order "Exhibit "I", if it could be confined strictly to the State of Oregon, might leave your orator a fair income upon its entire business, nevertheless, if the rates attempted to be established by the said
25 order, Exhibit "I", be applied to the interstate business directly affected thereby, and if the percentage of reduction effected by such order be applied to the local business of your orator

in the States of Oregon, Washington and Idaho, which local business is now being transacted upon rates higher than those fixed by tariff L 525, it would operate to confiscate the property of your orator and deprive it of property without due process of law in violation of the Constitution of the United States, because such reductions would leave your orator without any fair net earnings upon its property.

XXI.

If the State of Washington should see fit to establish rates in Washington equal to the rates attempted to be established by the said order "Exhibit I", the result would be that the interstate rate charged by your orator for the transportation of freight between various points in Oregon and various points in Washington, could not be lawfully or practically greater than the sum of the respective local rates so attempted to be established by the States of Oregon and Washington, and therefore the said interstate rate would be wholly and necessarily established by the said respective States, to the exclusion of, and contrary to, the sole and exclusive control which should properly be exercised thereover by Congress, under the Constitution of the United States, and by the Interstate Commerce Commission, pursuant to the Act to Regulate Commerce, hereinbefore mentioned.

XXII.

Certain persons in Baker City, Oregon, are engaged in the jobbing business, and are attempting to sell in Baker City and near by places, goods originating at points and places east of the Missouri River, and goods originating in California, in competition with
26 persons engaged in the jobbing business at Portland, Oregon.

As will be seen by reference to tariffs, Union Pacific I. C. C. No. 1578, trans-continental terminal tariffs, and tariff No. L 525, hereinbefore exhibited as part of this bill, a Baker City jobber pays a freight rate from the point of origin in the east, or in California, on the goods so sold by him, generally equal to the carload rate to Portland, plus the carload rate from Portland to Baker City, and then has to pay the less than carload rate from Baker City to the point of distribution; and the Portland jobber has to pay the carload rate from point of origin in the east or California, to Portland, and the less than carload rate from Portland to destination. So it is that the profit of the Baker City jobber, and his ability to sell goods, depends upon the difference between the carload rate from Portland and the less than carload rate from Portland to the point of destination. A comparison of the rates established by tariff No. L 525 with the rates attempted to be established by the order, Exhibit "I", taken in connection with the western classification, shows that said order, Exhibit "I" greatly decreases the difference between the carload rates from Portland and the less than carload lots from Portland, so that interstate traffic originating in the east and in California, and so in the past distribution from Portland and from Baker City respectively, can only be distributed advantageously and with profit, from Portland to all points in eastern Oregon, and thereby such

order, Exhibit "I", attempts to regulate the movement, as well as the rate charged, upon such interstate traffic, to the exclusion of, and contrary to, the control which should properly be exercised by congress, under the Constitution of the United States, and by the Interstate Commerce Commission, pursuant to the act to regulate commerce, hereinbefore mentioned, and therefore said order, Exhibit "I" is void.

27 A copy of said western classification on which is based the various tariffs exhibited as part of this bill, is hereto attached, marked Exhibit "M" and made a part hereof, and your orator prays that the same may be taken as a part of this bill as though fully embodied herein.

XXIII.

A large number of railroad companies are parties to the Trans-continental Tariff, Exhibits "F" and "G", and have concurred in the publishing and filing of the rates established thereby. Among the other companies so parties to the said tariff is the Northern Pacific Railway Company. The said Northern Pacific Railway Company owns and operates a railroad line from Portland, Oregon, to St. Paul, Minnesota, where said line has a physical connection with the line of the Chicago, Burlington & Quincy Railroad Company and other railroad companies operating lines of railroad from St. Paul, Minnesota to Chicago, Illinois; St. Louis, Missouri; Omaha, Nebraska, and other points east of the Missouri River, from which the rates mentioned in said tariff apply, and the rates fixed and established by said Trans-Continental Terminal Tariff apply from all the eastern points mentioned therein to Portland by way of the lines of the Northern Pacific Railway Company, and its connections, and freight is and can be transported from all the eastern points mentioned in said tariff to Portland by way of the lines of the said Northern Pacific Railway Company and its connections at the same rates as are fixed and established by said tariff from the same eastern points to Portland by way of the lines of your orator and its connections, and the said Northern Pacific Railway Company and its connections are engaged as common carriers in the transportation of large quantities of freight under said tariff from said eastern points to Portland.

28 The rates fixed and established by said Trans-Continental Terminal Tariff are very low and are less than reasonable rates for the service performed, and are made so low solely because of the fact that the freight covered by said tariff and mentioned therein is and can be transported from New York and other eastern points mentioned in said tariff to Portland by carriers operating vessels on the ocean from said eastern points to Portland, Seattle, Tacoma and the other North Pacific coast terminals mentioned in said tariff. And so it is that the direct effect of establishing and enforcing the rates ordered in the said order, Exhibit "I", would be to compel your orator and the other connecting lines parties to the said Union Pacific Tariff I. C. C. No. 1578 to reduce the rates established by the said tariff from all eastern points to all points in Oregon east of the The Dalles to an amount equal to or less than the combination of the rates established by said Trans-Conti-

nental Terminal Tariff and the rates attempted to be established by the Railroad Commission of Oregon by its order, Exhibit "I", and thus compel your orator and the other carriers connecting therewith to transport such freight from all points east of the Missouri River to all points in Oregon east of The Dalles for less than reasonable rates. and for less than the rates now established by said Union Pacific Tariff I. C. C. No. 1578, or would be to compel your orator and the other carriers connecting therewith to cease the direct carriage of said traffic from all points east of the Missouri River to all points in Oregon east of The Dalles, and allow such traffic to be first transported to Portland, Oregon, in part by ocean, or in part by the lines of the Northern Pacific Railway Company, thus diverting large quantities of such interstate traffic from the lines of your orator and its connections to the lines of such other carriers.

29 XXIV.

Large quantities of wool are moved over the lines of your orator and connecting lines from points in eastern Oregon to Boston, Massachusetts; New York, New York, and Philadelphia, Pennsylvania, by a tariff duly published and filed with the Interstate Commerce Commission as required by an act to regulate commerce and the acts amendatory thereof, a rate on wool in grease in square bales compressed to not less than nineteen pounds per cubic foot, from Portland, Oregon, to Boston, Massachusetts; Philadelphia, Pennsylvania, and New York, New York, is established at one dollar per hundred pounds, and said rate is the only rate which your orator and other connecting carriers can lawfully charge upon such wool from Portland to Boston, Massachusetts and said eastern points. Said tariff is numbered Trans-Continental Freight Bureau Tariff, east-bound, No. 2D, I. C. C. No. 812, and is hereto attached, marked Exhibit "J" and made a part hereof, and your orator prays that the same may be taken as a part hereof as though fully embodied herein. As appears by reference to the said tariff, the Northern Pacific Railway Company, hereinbefore mentioned, is a party to the said tariff, and the rates so made apply over the lines of the said Northern Pacific Railway Company and its connections from Portland, Oregon, to Boston, Massachusetts and other eastern points. The rates fixed and established by the said tariff, Exhibit "J" are very low and are less than reasonable rates for the service performed, and are made so low solely as the result of competition from Portland to Boston, Massachusetts by ocean and other carriers competing with the lines of your orator. Wool in grease in square bales compressed to not less than nineteen pounds per cubic foot, in carloads, takes the third class rate in all tariffs based upon the western classification hereto attached and marked Exhibit
30 "M". Your orator, in connection with the Oregon Short Line Railroad Company and the Union Pacific Railroad Company and various other lines connecting therewith, has duly published and duly filed with the Interstate Commerce Commission, as required by law, a commodity tariff on such wool from various points and places in eastern Oregon on the lines of your orator's

railroad east of The Dalles to Boston, Massachusetts; Philadelphia, Pennsylvania; New York, New York, and other eastern points. Said tariff is numbered O. R. & N., I. C. C. No. 1177. A copy of said tariff and of Supplement No. 3 thereto is hereto attached and made a part hereof marked Exhibit "K", and your orator prays that the same may be taken as a part hereof as though fully embodied herein. Your orator and the other carriers named therein have also duly published and duly filed with the Interstate Commerce Commission as required by law, a commodity tariff on such wool from points and places in eastern Oregon on the lines of your orator's railroad to Boston, Massachusetts and the other points named in said tariff. Said tariff is numbered O. R. & N., I. C. C. 1065. A copy of said tariff and of Supplements 2 and 3 thereto are hereto attached and made a part hereof and marked Exhibit "L", and your orator prays that the same may be taken as a part hereof as though fully embodied herein. Each of the said tariffs were duly published and filed with the Interstate Commerce Commission, as required by the act to regulate commerce and the acts amendatory thereof, and such rates, and each of them, are the only lawful rates which your orator and the carriers connecting therewith can charge upon such wool from the points in Oregon east of The Dalles shown by such supplement to Boston, Massachusetts; Philadelphia, Pennsylvania; New York, New York, and other eastern points, and are reasonable rates. The rates so established by said tariffs are equal to

31 or less than a combination of the third class rate fixed and established by tariff No. L 525 from said points in Oregon east of The Dalles to Portland, and the rate of one dollar per hundred pounds fixed and established from Portland, Oregon, to Boston, Massachusetts; Philadelphia, Pennsylvania, and New York, New York, by said Exhibit "J." The third class applicable to such wool attempted to be fixed by said order, Exhibit "I," from points in Oregon east of The Dalles, mentioned and shown in said Exhibits "K" and "L," to Portland added to the rate on such wool from Portland to Boston, Massachusetts of one dollar per hundred pounds so fixed and established by said tariff Exhibit "J," would be less in nearly every case than the legal rates from the same eastern Oregon points to Boston, Massachusetts fixed and established by said Exhibits "K" and "L." In the following table the figures under the words "Present Rate" are the rates fixed and established by said Exhibits "K" and "L," from the points named to Boston, Massachusetts, on such wool, and the figures under the heading "Combined Rate" would be the rate resulting from combining the rate from Portland under Exhibit "J" with the third class rate attempted to be fixed and established by said order, Exhibit "I," from points in eastern Oregon named in said table to Portland, to-wit:

From—	Present rate.	Combined rate.
Biggs	130	127
Arlington	146	141
Heppner	162	155
Umatilla	160	153
Pendleton	172	163
Elgin	195	182
Shaniko	150	147
Condon	160	153

It thus appears that if the rates attempted to be fixed by the Railroad Commission of Oregon between points in Oregon east of The Dalles and Portland by the said order, Exhibit "I," should go into effect your orator and other companies concurring in said Exhibits "K" and "L" respectively, would be compelled to reduce the
32 rates so fixed and established by such tariffs on such wool from points in eastern Oregon to Boston, Massachusetts, or otherwise the direct shipment of wool from such points in eastern Oregon to Boston, Massachusetts would cease and such wool would be first transported to Portland and then re-shipped to Boston, Massachusetts, and your orator and the other lines connecting therewith would be subject to the risk and injury of having such wool shipped from Portland over lines competing with those of your orator in the carriage of such wool from Portland, Oregon, to Boston, Massachusetts.

XXV.

The rates charged by your orator between Portland and The Dalles and fixed and established by Tariff No. L 525 are unreasonably low and are made solely as the result of the competition of carriers operating boats upon the Willamette and Columbia Rivers. In and by said order, Exhibit "I," all of the rates undertaken to be fixed and established by said Railroad Commission of Oregon to points east of The Dalles are based upon the rates charged by your orator between Portland and The Dalles, and the rate of increase of the rates to points east of The Dalles undertaken to be established by said order, Exhibit "I," is unreasonably low and unjust to your orator, and has the effect of itself and as the result of basing upon the rates so made between Portland and The Dalles of making the rates to points east of The Dalles unreasonably low and unjust to your orator, and has the effect of making the rates to some of the points and places east of The Dalles less than the rates to The Dalles, so that said Commission in and by said order, Exhibit "I," undertook to provide, as appears in said order, that the rates undertaken to be established to points east of The Dalles might equal the present rates to The Dalles when the application of the formula undertaken to be prescribed by said order would reduce the rates below the present rates between Portland and
33 The Dalles. The application of the present rates between Portland and The Dalles to points beyond The Dalles causes

such rates to points beyond The Dalles to be unreasonably low and unjust to your orator.

Said order, Exhibit "I," undertakes to fix and establish rates upon the branch lines in Oregon owned, leased or operated by your orator, and it is found by said order, Exhibit "I," that the rates upon such branch lines shall be the same for equal distances as are undertaken to be fixed and established upon the main line, but nevertheless such order finds that the rates so undertaken to be fixed and established upon the main line are just and reasonable rates. It is a fact, and your orator so charges, that upon said branch lines, and each of them, the cost of the service to your orator is much greater than the cost of service upon the main line and the traffic is less, and the service rendered to the public reasonably worth more upon such branch lines than the service rendered for corresponding distances upon the main line, and that the rates so undertaken to be fixed and established upon such branch lines by said order, Exhibit "I," are unreasonably low and are unjust to your orator. According to the basis of rates undertaken to be established by said order, Exhibit "I," the following are the rates upon various classes between Portland and Umatilla, Portland and Pendleton, Portland and La Grande, Portland and Baker City, to-wit:

Between Portland and—	Classes.									
	1	2	3	4	5	A	B	C	D	E
Umatilla.....	75	64	53	45	38	38	30	23	19	15
Pendleton.....	90	77	63	54	45	45	36	27	23	18
La Grande.....	115	98	81	69	58	58	46	35	29	23
Baker City.....	117	99	82	70	59	59	47	35	29	23

The distance from Portland to Umatilla is 186 miles, to Pendleton 230 miles, to La Grande 305 miles, and to Baker City 356 miles. Your orator's railroad between La Grande and Baker 34 City crosses two grades so heavy that additional engines have to be used in assisting over said grades trains which one engine can haul upon a level grade, and the service connected with the operation of a train from La Grande to Baker City is expensive and greater than the services required in hauling a train upon a level grade; that between Pendleton and Umatilla there is no grade. It is nevertheless found by said order, Exhibit "I," that all the rates hereinbefore mentioned are just and reasonable, but as hereinbefore alleged and shown, the said order, Exhibit "I," allows your orator to charge but two cents more for hauling from Portland to Baker City than for the haul from Portland to La Grande upon first-class freight, one cent more on second, third, fourth, fifth, A and B classes, and required your orator to carry freight under classes C, D and E to Baker City at exactly the same rate as your orator is allowed to charge to La Grande, but makes a difference in the rates to La Grande as compared to the rates to Pendleton of from five to twenty-five cents per hundred pounds

upon the various classes, and makes a difference in the rates to Pendleton as compared with the rates to Umatilla of from three to fifteen cents per hundred pounds upon the various classes. It is a fact, and your orator so charges, that such attempted adjustment of rates is arbitrary and unreasonable, and is founded upon no circumstance and condition affecting the cost of service to your orator or the value of the service to the public, and is unjust to your orator. Your orator charges and avers that the entire basis of rates and the rates so undertaken to be fixed and established by said Railroad Commission in and by said order, Exhibit "I," are arbitrary and are unreasonably low and unjust to your orator, and because thereof said order should be set aside for the reason that the said Commission has no power to attempt to establish arbitrary, unjust and
35 unreasonable rates upon the lines of your orator's said railroad and the branches thereof owned or operated by your orator.

XXV-*e*.

By the said Railroad Commission act no adequate or proper remedy has been given or provided for the protection of your orator against the injustice or unlawfulness of the order, Exhibit "I," so attempted to be made by the said Railroad Commission of Oregon. In and by Section 51 of the said act it is provided that if any railroad company shall omit to do any act, matter or thing required to be done by it, such railroad shall be liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation, together with a reasonable counsel or attorney's fee to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case, and by Section 53 of the said act it is provided that if any railroad shall fail, neglect, or refuse to obey any order made by the Commission, for every such violation, failure or refusal such railroad shall forfeit and pay into the State treasury a sum not less than one hundred dollars nor more than ten thousand dollars for such offense, and that the act, omission or failure of any officer, agent or other person employed by any railroad acting within the scope of his employment shall in every case be deemed the act, omission or failure of such railroad. By Section 33 of the said act it is provided that no injunction shall issue suspending any order or requirement of the Commission fixing rates except on condition that the court shall require a bond with good and sufficient surety conditioned that the railroad applying for such injunction shall answer to damages caused by the delay in the enforcement of the order of the Commission, and all penalties that would attach against the said
36 railroad and all compensation for whatever sums for transportation service any person or corporation shall be compelled to pay in excess of the sums such person or corporation would have been compelled to pay if the order of the Commission had not been suspended, and it is further provided that no appeal to the Supreme Court shall stay the operation of any order of the Commission, unless the Circuit Court or Supreme Court shall so direct, and unless

the railroad so appealing shall give a bond with like conditions and terms as that given on granting injunctions suspending an order of the Commission fixing rates. Your orator is advised by counsel, and so charges, that the various provisions of the said law pretending to give remedies reviewing the orders of the Railroad Commission of Oregon are inconsistent and so unreasonable and indeterminate as that no remedy is practically afforded thereby to your orator or other transportation companies affected by said act, and that the provisions of said act are not uniform and are wholly unequal in their application to the various persons and transportation companies affected by the same, and that although the said court in which proceedings to review an order of the Commission may be instituted may be of the opinion that such order of the Commission is unlawful, unjust and ought to be suspended and enjoined, yet nevertheless, and notwithstanding such opinion, no injunction can be granted by the Circuit Court except upon the giving of a bond conditioned as provided in said Section 33, and no stay bond and appeal to the Supreme Court shall be granted except upon giving a like bond as provided by said Section 33, but that none of the said provisions as to said bond are applicable to any review of the said orders by other persons affected by the said act, nor is there any provision whatever for appropriate bonds for the protection of the transportation companies, or to reimburse them for losses or
37 freight charges arising by any order of the said Commission, or which may accrue pending any proceedings to review such orders, the same being in the meantime by the railroad company obeyed. The said Railroad Commission act is, and the penalties prescribed for its violation so prescribed that no owner or operator of any railroad property can invoke the jurisdiction of the court to test the validity thereof except at the risk of confiscation of such property, and the said act and the said order, Exhibit "I," deny to your orator equal protection of the laws, and deprive it of its property without due process of law, and are, and each of them is, for that reason unconstitutional and void.

XXVI.

Your orator further alleges that at all times since the 18th day of September, 1857, Article III of the constitution of the State of Oregon has been, and is now, in force, of which the following is a full and correct copy, to-wit:

"Article III.

"SECTION 1. The powers of the government shall be divided into three separate departments,—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided."

In the said constitution of Oregon it is not expressly or otherwise provided that any commission or body shall be created having the

powers and duties and functions attempted to be conferred upon the Railroad Commission of Oregon by the said Railroad Commission act hereto attached and marked Exhibit "A," or any of such powers, duties or functions. In and by the terms and provisions of the said act of the legislative assembly of the State of Oregon, a copy of which is hereto annexed, marked Exhibit "A" and to which
38 reference is hereby made for the full ascertainment of its terms, there is conferred upon the defendants Campbell, Aitchison and West, together constituting the Board of Railroad Commissioners of the State of Oregon, legislative, executive and judicial powers, and there is conferred upon them, both legislative and judicial powers, and there is conferred upon them both legislative and administrative powers, and there is conferred upon them both judicial and administrative powers. For example: Your orator shows that by Section 22 of the said act it is provided that, if upon investigation of an existing rate or classification, the Commission shall determine that it is unreasonable, the Commission shall have power to fix, and order substituted therefor, such rate or classification as it shall have determined to be just. And your orator shows that the act of determining what rate should have been charged is a judicial act, and the act of fixing and establishing a new rate for the future is a legislative act, and your orator further shows that by Section 30 of the act it is provided that the Commission may establish a joint rate and provide for its apportionment between the carriers over whose lines the rate applies; and your orator shows that the establishment of such joint rate is a legislative act, and that the apportionment of such joint rate is a judicial act. And, for example, by Section 23 of said act, it is provided that when ordered by the Commission, carriers shall erect station houses at intersections of railroads, and that railroads shall keep such depot warm, lighted and open for a reasonable time before the arrival and after the departure of passenger trains, and your orator shows that the ordering of the construction of a depot is a legislative act, and the prescribing of the time during which it shall be kept open before and after the arrival of trains, is an administrative act.

And your orator further shows that said act attempts in
39 divers other ways to confer upon the said Commission, and the members thereof, administrative, judicial and legislative powers, as will more fully appear by reference to the copy of said act, which is hereunto attached, marked Exhibit "A," and said commission is exercising and attempting to exercise each of such powers and all of them.

Your orator further shows that said act is in contravention of the constitution of the State of Oregon, and particularly of Article III thereof, in that by its terms and provisions there is made an attempt to confer upon one person or body of persons charged with official duties, the right to exercise the functions of more than one department of the government, and that said act of the legislature, and the whole thereof, and all of the acts done by said Railroad Commission are unconstitutional and void.

XXVII.

Your orator avers that the said defendants Thomas K. Campbell, Clyde B. Aitchison and Oswald West, as such Railroad Commissioners of the State of Oregon, threaten, pursuant to the authority of Section 57 of the said act of the legislature of Oregon, and a copy of which is hereto attached, marked Exhibit "A," to apply to the defendant A. M. Crawford, as Attorney General of the State of Oregon, to institute an action or proceeding for the recovery of the penalties provided for by said act of the legislature of Oregon (reference being particularly had to Section 53 of said act), should your orator fail or refuse to comply with each and all of the terms, provisions and conditions contained in the said order of the Railroad Commission of Oregon, a copy of which is hereto attached, marked Exhibit "I;" and your orator further shows that the said Crawford, as Attorney General of the State of Oregon, is threatening to
40 institute an action or proceeding against your orator for the recovery of the penalties provided for by said act of the legislature of Oregon, and that each and all of defendants are threatening to institute such proceedings against your orator, its officers, directors, agents and employés as will compel your orator to publish and put into effect the rates prescribed in the said order of April 22nd, 1908.

And your orator avers that should said proceedings be instituted and should your orator fail or refuse to observe the said order of the Commission and to put into force and effect the tariffs therein prescribed and to make the reductions in the present published tariffs in force and effect, the said A. M. Crawford, as Attorney General for the State of Oregon, proposes to and will take and institute such proceedings as will compel this complainant to observe and put in effect the rates prescribed in said order and that should this be done this complainant will be exposed to the danger of excessive fines and penalties provided for in said act and it will amount in effect to confiscation of the property of your orator and that the same will be so excessive as to intimidate your orator, its officers, directors and agents, from seeking to test the validity of said order of the Railroad Commission, and will also compel your orator to put into effect rates and regulations governing and affecting interstate traffic passing over the lines of railroad of this complainant and of the other railroads hereinbefore mentioned contrary to the provisions of the act of Congress approved February 4th, 1887, entitled "An Act to regulate commerce," and the regulations of the Interstate Commerce Commission made pursuant thereto and contrary to the terms, provisions, tariffs and regulations prescribed by and now appearing in the tariffs hereinbefore issued by this
41 complainant and which were concurred in by the other railroads hereinbefore mentioned and which have been duly filed with the Interstate Commerce Commission, and are now in full force and effect. Unless restrained and enjoined from so doing as herein prayed, the defendants and each of them threaten to and will do the acts and things hereinbefore alleged, and will thereby subject

your orator to fines and penalties greatly in excess of the sum of $10,000,000 per week, and will subject your orator through the loss of traffic and of earnings therefrom to great and irreparable loss and injury.

XXVIII.

Every freight shipment which said order, Exhibit "I," seeks to affect may, if your orator shall fail to observe and put in force the rates attempted to be established by the said order, result in an action against your orator, or in criminal proceedings against its officers, agents and employés, and will result in an endless number of actions at law and criminal proceedings.

Your orator has no plain, speedy or adequate remedy at law, and the injury done and threatened is such that your orator will be wholly remediless unless the said defendants and each of them be restrained from the enforcement of the said railroad commission act and from the enforcement of the said order so made by the said Railroad Commission of Oregon and hereto attached marked Exhibit "I." Wherefore wour orator brings this its bill, and thereupon your orator prays:

First. That this honorable court will grant an order temporarily restraining Thomas K. Campbell, Clyde B. Aitchison and Oswald West, and each of them, from attempting to enforce the said order of April 22, 1908, hereinbefore set out and marked Exhibit "I," and from attempting to compel your orator to observe, publish, post and put in force the said rates attempted to be established
42 by said order or any of them, and from taking any action, step or proceedings against your orator or any of its officers, directors, agents or employés, to enforce any penalties or remedies for the violation by your orator of said order, and temporarily restraining the said A. M. Crawford as Attorney General of the State of Oregon from any attempt to enforce the said order or from attempting to compel this complainant to observe, publish, or put in force said rates or any of them as required in said order, and from taking any action, step or proceedings against your orator or any of its officers, directors, agents or employés, to enforce any of the penalties or remedies provided in said act of the legislature of Oregon attempting to create said Railroad Commission, such order to be effective until the further order of this court.

Second. That this honorable Court will issue a rule directed to the defendants and each of them commanding them and each of them to be and appear before one of the judges of this court at such time and place as the court may designate then and there to show cause, if any they can, why the relief prayed for should not be granted and injunction issued.

Third. That upon the hearing under the rule, this honorable Court will decree that a writ of injunction be issued enjoining and restraining the defendants and each of them from attempting to enforce the said order of April 22, 1908, hereinbefore set out and marked Exhibit "I," and from attempting to compel your orator to observe, publish, post or put in force said rates attempted to be

established by said order or any of them and from taking any action, step or proceeding against your orator or any of its officers, directors, agents or employes to enforce any penalties or remedies for the violation by your orator of said order or from taking any action, step or proceedings against your orator or any of its
43 officers, directors, agents or employes to enforce any of the penalties or remedies provided in the said Act of the legislature of Oregon attempting to create said railroad commission.

Fourth. That upon final hearing herein said injunction be made permanent and perpetual, and that a decree be entered perpetually enjoining the said defendants and each of them as hereinbefore prayed, and that upon such final hearing the court may be pleased to decree that the said order Exhibit "1" of the Railroad Commission of Oregon be declared to be in violation of the Constitution of the United States and of the acts of Congress passed pursuant thereto, and therefore void and of no effect so far as this complainant, its officers, directors and agents are concerned, and that the so-called Railroad Commission of Oregon be declared to be without power or authority to make, fix or establish rates upon your orator's line of railroad, and that the said railroad commission act be declared to be in violation of Article III of the constitution of the State of Oregon, and that the order attempted to be made under said act be declared to be null and void.

Fifth. That your orator may have such other and further relief in the premises as the nature and circumstances of the case may require, and the court may seem meet and equitable.

And may it please your honors to grant unto your orator a writ of injunction conformable to the prayer of this bill and also a writ of subpœna issuing out of and under the seal of this honorable Court to be directed to the said defendants, Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, and each of them, commanding them and each of them on a day certain therein to be named and under a certain penalty to be and appear before your honorable Court, and then and there full, true and perfect answers make to all and singular the premises (but not
44 under oath, their and each of their answers under oath being hereby expressly severally waived), and to stand and perform and abide such further orders, direction and decree therein as to your Honors shall seem meet and shall be agreeable to equity and good conscience, and your orator will ever pray.

THE OREGON RAILROAD AND NAVIGATION COMPANY,
By W. W. COTTON,
[SEAL.] *Its Secretary and General Attorney.*
W. W. COTTON AND
H. F. CONNER,
Solicitors for Complainant.

W. W. COTTON,
Of Counsel for Complainant.

STATE OF OREGON,
County of Multnomah, ss:

I, W. W. Cotton, being first duly sworn, depose and say that I am the Secretary of the complainant company, that I signed the corporate name of the complainant company to the foregoing bill of complaint, and attached the corporate seal thereto.

I further say that I have read the foregoing bill of complaint, know the contents thereof, and that the same is in all respects true of my own knowledge, except as to the matters and things which are therein stated upon information and belief, and as to those things, I believe the same to be true.

W. W. COTTON.

Subscribed and sworn to before me this 11th day of May, 1908.

[SEAL.]

L. F. STEEL,
Notary Public for Oregon.

Bill of Complaint. Filed May 11, 1908. J. A. Sladen, Clerk.

45 And afterwards, to wit, on the 11th day of May, 1908, there was issued out of said Court a subpœna ad respondendum, in words and figures, as follows, to wit:

46 *Return of Civil Process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 12th day of May, 1908, at Portland, Multnomah County in said District I duly served the within Subpœna ad Respondendum upon the therein named Clyde B. Aitchison, by delivering to him personally and in person, and leaving with him a true copy of said subpœna ad Respondendum, duly certified to by Clerk of the Circuit Court, together with a copy of the Motion and Order to show cause in the within entitled action, duly certified to by the Clerk of the Circuit Court for said District, together with the Copy of the Bill of Complaint duly certified to by H. F. Conner, one of solicitors for Complainants.

CHARLES J. REED,
United States Marshal.
By LEONARD BECKER, *Deputy.*

47 In the Circuit Court of the United States for the District of Oregon.

No. 3308. In Equity.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendant-.

Subpœna ad Respondendum.

The President of the United States of America to Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the Court room thereof, in the City of Portland, in said District, on the first Monday of July next, which will be the 6th day of July, A. D. 1908, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein The Oregon Railroad & Navigation Company is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or your deputy, to make due service of this our writ of subpœna and to have then and there the same.

Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 11th day of May, in the year of our Lord, One Thousand Nine Hundred and eight and of the Independence of the United States, the One Hundred and thirty-second.

[SEAL.] J. A. SLADEN, *Clerk.*

By —— ——,
Deputy Clerk.

Memorandum pursuant to Equity Rule No. 12 of the Supreme Court of the United States:

The Defendant is to enter his appearance in the above entitled suit in the Office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the Complainant's Bill therein may be taken pro confesso.

[Endorsed:] Doc. 387. P. 43. No. 3308. In the Circuit Court of the United States, for the District of Oregon. In Equity. Oregon Railroad & Navigation Company vs. Thomas K. Campbell, et al. Subpœna ad Respondendum. Returned and Filed May 14, 1908. J. A. Sladen, Clerk. By —— ——,Deputy Clerk.

48 And afterwards, to wit, on the 11th day of May, 1908, there was issued out of said Court a subpœna ad respondendum, in words and figures, as follows, to wit:

49 *Return of Civil Process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 13th day of May, 1908, at Portland, Multnomah County in said District I duly served the within Subpœna ad Respondendum upon the therein named Thomas K. Campbell, by delivering to him personally and in person and leaving with him a true copy of said subpœna ad Respondendum, duly certified to by Clerk Circuit Court, together with a copy of the Motion and Order to show cause in the within entitled Action, duly certified to by the Clerk of the Circuit Court for said District, together with the copy of the Bill of Complaint, duly certified to by H. F. Conner, one of the Solicitors for Complainants.

CHARLES J. REED,
United States Marshal,
By LEONARD BECKER, *Deputy.*

50 In the Circuit Court of the United States for the District of Oregon.

No. 3308. In Equity.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendant-.

Subpœna ad Respondendum.

The President of the United States of America to Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the Court room thereof, in the City of Portland, in said District, on the first Monday of July next, which will be the 6th day of July, A. D. 1908, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein The Oregon Railroad & Navigation Company is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in his behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or

your deputy, to make due service of this our writ of subpœna and to have then and there the same.

Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 11th day of May, in the year of our Lord, One Thousand Nine Hundred and eight and of the Independence of the United States, the One Hundred and thirty-second.

[SEAL.] J. A. SLADEN, *Clerk,*
By —— ——,
Deputy Clerk.

Memorandum pursuant to Equity Rule No. 12 of the Supreme Court of the United States:

The Defendant is to enter his appearance in the above entitled suit in the Office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the Complainant's Bill therein may be taken pro confesso.

[Endorsed:] Doc. 385. P. 43. No. 3308. In the Circuit Court of the United States, for the District of Oregon. In Equity. Oregon Railroad & Navigation Company vs. Thomas K. Campbell, et al. Subpœna ad Respondendum. Returned and Filed May 14, 1908. J. A. Sladen, Clerk. By —— ——,Deputy Clerk.

51 And afterwards, to wit, on the 11th day of May, 1908, there was issued out of said Court a subpœna ad respondendum, in words and figures, as follows, to wit:

52 *Return of Civil Process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 13th day of May, 1908, at Portland, Multnomah County in said District I duly served the within Subpœna ad Respondendum upon the therein named Oswald West, by delivering to him personally and in person and leaving with him a true copy of said subpœna ad Respondendum, duly certified to by Clerk Circuit Court, together with a copy of the Motion and Order to show cause in the within entitled Action, duly certified to by the Clerk of the Circuit Court for said District, together with the copy of the Bill of Complaint, duly certified to by H. F. Conner, one of the Solicitors for Complainants.

CHARLES J. REED,
United States Marshal.
By LEONARD BECKER, *Deputy.*

53 In the Circuit Court of the United States for the District of Oregon.

No. 3308. In Equity.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendant-.

Subpœna ad Respondendum.

The President of the United States of America to Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the Court room thereof, in the City of Portland, in said District, on the first Monday of July next, which will be the 6th day of July, A. D. 1908, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein The Oregon Railroad & Navigation Company is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or your deputy, to make due service of this our writ of subpœna and to have then and there the same.

Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 11th day of May, in the year of our Lord, One Thousand Nine Hundred and eight and of the Independence of the United States, the One Hundred and thirty-second.

[SEAL.] J. A. SLADEN, *Clerk.*
By —— ——,
Deputy Clerk.

Memorandum pursuant to Equity Rule No. 12 of the Supreme Court of the United States:

The Defendant is to enter his appearance in the above entitled suit in the Office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the Complainant's Bill therein may be taken pro confesso.

[Endorsed:] Doc. 386, P. 43. No. 3308. In the Circuit Court of the United States, for the District of Oregon. In Equity. Oregon Railroad & Navigation Company vs. Thomas K. Campbell et al. Subpœna ad Respondendum. Returned and Filed May 14, 1908. J. A. Sladen, Clerk. By —— ——, Deputy Clerk.

54 And afterwards, to wit, on the 11th day of May, 1908, there was issued out of said Court a subpœna ad respondendum, in words and figures, as follows, to wit:

55 *Return of Civil Process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 12th day of May, 1908, at Portland, Multnomah County in said District I duly served the within Subpœna ad Respondendum upon the therein named A. M. Crawford, by delivering to him personally and in person and leaving with him a true copy of said subpœna ad Respondendum, duly certified to by Clerk Circuit Court, together with a copy of the Motion and Order to show cause in the within entitled Action, duly certified to by the Clerk of the Circuit Court for said District, together with the copy of the Bill of Complaint, duly certified to by H. F. Conner, one of Solicitors for Complainants.

CHARLES J. REED,
United States Marshal,
By LEONARD BECKER, *Deputy.*

56 In the Circuit Court of the United States for the District of Oregon.

No. 3308. In Equity.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendant-.

Subpœna ad Respondendum.

The President of the United States of America to Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the Court room thereof, in the City of Portland, in said District, on the first Monday of July next, which will be the 6th day of July A. D. 1908, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein The Oregon Railroad & Navigation Company is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or your

deputy, to make due service of this our writ of subpœna and to have then and there the same.

Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 11th day of May in the year of our Lord, One Thousand Nine Hundred and eight and of the Independence of the United States, the One Hundred and thirty-second.

[SEAL.]

J. A. SLADEN, *Clerk*,
By —— ——,
Deputy Clerk.

Memorandum pursuant to Equity Rule No. 12 of the Supreme Court of the United States:

The Defendant is to enter his appearance in the above entitled suit in the office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the Complainant's Bill therein may be taken pro confesso.

[Endorsed:] Doc. 384, P. 43. No. 3308. In the Circuit Court of the United States, for the District of Oregon. In Equity. Oregon Railroad & Navigation Company vs. Thomas K. Campbell et al. Subpœna ad Respondendum. Returned and Filed May 14, 1908. J. A. Sladen, Clerk. By —— ——, Deputy Clerk.

57 And afterwards, to wit, on Wednesday, the 20th day of May 1908, the same being the 33rd Judicial day of the Regular April term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

58 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD AND NAVIGATION COMPANY
vs.
THOMAS K. CAMPBELL et al.

MAY 20, 1908.

Now, at this day, come the plaintiff in the above entitled cause by Mr. W. W. Cotton, of counsel, and the defendants by Mr. Joseph N. Teal, of counsel, whereupon, on motion of said defendants, it is ordered that the hearing upon the order to show cause herein be, and the same is hereby, continued to Tuesday, May 26, 1908.

And on motion of said plaintiff, said defendants consenting thereto, it is ordered that it be, and is hereby, allowed to amend its bill of complaint herein by interlineation.

59 And afterwards, to wit, on the 6th day of July, 1908, there was duly filed in said Court, a præcipe for appearance, in words and figures as follows, to wit:

60 In the Circuit Court of the United States for the District of Oregon.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

To the Clerk of the above entitled Court:

You will please enter our appearance as solicitors for the above named defendants.

JOSEPH N. TEAL.
A. M. CRAWFORD.
WIRT MINOR.

Dated at Portland, Oregon, this the 6th day of July, A. D., 1908.
Teal & Minor 702 Couch Building Portland, Oregon.
A. M. Crawford, Salem, Oregon.

Service by copy admitted at Portland, Oregon, July 6, 1908.
W. W. COTTON,
Solicitor for Complainant.

Filed July 6, 1908 G. H. Marsh, Clerk.

61 And afterwards, to wit, on the 1st day of August, 1908, there was duly filed in said Court, a demurrer to bill of complaint, in words and figures as follows, to wit:

62 In the Circuit Court of the United States for the District of Oregon.

Demurrer.

No. —.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOS. K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

The Joint and Several Demurrers of Thos. K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, Defendants Above Named, to the Bill of Complaint of Complainant Above Named.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things, in the said complainant's bill

of complaint contained, to be true, in such manner and form as the same are therein set forth and alleged, do demur to said bill on the following grounds and each of them.

I.

That it appears upon the face of the bill herein that the Court has no jurisdiction of the subject matter of the controversy between the parties.

II.

That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by the said bill against these defendants, or any of the defendants.

III.

That said complainant has not in and by its said bill stated such a case as doth or ought to entitle it to the relief thereby sought and prayed for, from or against these defendants or any of them.

IV.

63 That it appears upon the face of the bill that the complainant has an adequate remedy at law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants demur thereto, and pray the judgment of this Honorable Court whether they shall be compelled to make any answer to said bill, and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

JOSEPH N. TEAL,
WIRT MINOR,
A. M. CRAWFORD,
Solicitors and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well-founded in point of law.

JOSEPH N. TEAL,
Of Counsel for Defendants.

Portland, Oregon, August 1", 1908.

STATE OF OREGON,
County of Multnomah, ss:

Clyde B. Aitchison, being duly sworn, deposes and says, I am one of the above-named defendants. The foregoing demurrer is not interposed for delay.

CLYDE B. AITCHISON.

Subscribed and sworn to before me, this 1" day of August, 1908.
[SEAL.]

A. B. WINFREE,
Notary Public for Oregon.

64 STATE OF OREGON,
County of Multnomah, ss:

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this the 1st day of August, 1908, by receiving a copy thereof being certified to as such by Joseph N. Teal, of Counsel for Defendant.

W. W. COTTON,
Counsel for Complainant.

Demurrer. Filed August 1, 1908. G. H. Marsh, Clerk.

65 And Afterwards, to wit, on the 1st day of August, 1908, there was duly filed in said Court, a demurrer to portions of bill of complaint, in words and figures as follows, to wit:

66 In the Circuit Court of the United States for the District of Oregon.

Demurrer to Portions of Complaint.

No. —.

THE OREGON RAILROAD & NAVIGATION CO. Complainant,
vs.
THOS. K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

The Joint and Several Demurrers of Thos. K. Campbell, Clyde B. Aitchison, Oswald West and A. M. Crawford, Defendants Above Named, to the Bill of Complaint of Complainant Above Named.

These defendants appearing by protestation, not confessing or acknowledging all or any of the matters or things in said complainant's bill of complaint, to be true, in such manner and form as the same are therein set forth and alleged, do demur as to so much and such part of the bill of complaint as is contained in paragraphs six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, thereof, and in each of said paragraphs, on the following grounds and each of them.

I.

That it appears from the facts set forth in said paragraphs, and in each and all of them, that complainant is not entitled to the relief, or any part thereof, prayed for, from or against these defendants, or any of the defendants.

II.

That the facts as set out in said paragraphs, and each and all of them, do not state a cause of suit, or any part of a cause of suit against these defendants, or any of the defendants.

67 And these defendants by protestation, not confessing or acknowledging any of the matters or things in said complainant's bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, do further demur to the matters and things set forth in various paragraphs of said bill of complaint, separately as to each paragraph, for the reasons and grounds hereinafter set forth, and for each of them.

Said defendants do demur separately to paragraph six.
Said defendants do demur separately to paragraph seven.
Said defendants do demur separately to paragraph eight.
Said defendants do demur separately to paragraph nine
Said defendants do demur separately to paragraph ten.
Said defendants do demur separately to paragraph eleven.
Said defendants do demur separately to paragraph twelve.
Said defendants do demur separately to paragraph thirteen.
Said defendants do demur separately to paragraph fifteen.
Said defendants do demur separately to paragraph sixteen.
Said defendants do demur separately to paragraph seventeen.
Said defendants do demur separately to paragraph eighteen.
Said defendants do demur separately to paragraph nineteen.
Said defendants do demur separately to paragraph twenty.
Said defendants do demur separately to paragraph twenty-one
Said defendants do demur separately to paragraph twenty-two.
Said defendants do demur separately to paragraph twenty-three.
Said defendants do demur separately to paragraph twenty-four.
Said defendants do demur separately to paragraph twenty-five "a".
Said defendants do demur separately to paragraph twenty-six.

68 Said defendants do demur separately to paragraph twenty-seven.

Said defendants do demur separately to paragraph twenty-eight.

I.

That it appears from the facts set forth in each of said paragraphs, and in all of them, that complainant is not entitled to the relief, or any part thereof, prayed for from or against these defendants, or any of the defendants.

II.

That the facts as set forth in each of said paragraphs, and all of them, do not state a cause of suit, or any part of a cause of suit, against these defendants, or any of the defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants demur thereto, and pray the judgment of this Honorable Court whether they shall be compelled to make any answer to said bill, and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

JOSEPH N. TEAL,
WIRT MINOR,
A. M. CRAWFORD,
Solicitors and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well-founded in point of law.

JOSEPH N. TEAL,
Of Counsel for Defendants.

Portland, Oregon, August 1st, 1908.

69 STATE OF OREGON,
County of Multnomah, ss:

Clyde B. Aitchison, being duly sworn, deposes and says, I am one of the above-named defendants. The foregoing demurrer is not interposed for delay.

CLYDE B. AITCHISON.

Subscribed and sworn to before me, this 1st day of August, 1908.

[SEAL.] A. B. WINFREE,
Notary Public for Oregon.

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this the 1st day of August, 1908, by receiving a copy thereof, being certified to as such by Joseph N. Teal, of Counsel for Defendants.

W. W. COTTON,
Counsel for Complainant.

Demurrer to Portions of the Complaint. Filed August 1, 1908. G. H. Marsh, Clerk.

70 And Afterwards, to wit, on Tuesday, the 28th day of September, 1909, the same being the 146th Judicial day of the Regular April Term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

71 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD.

SEPTEMBER 28, 1909.

This cause was heard on July 7, 1908, upon the application of the plaintiff for a preliminary injunction herein; and was further

heard on November 2, 1908, upon the demurrer of said defendants to the Bill of Complaint herein, and was argued by Mr. W. W. Cotton, of counsel for said plaintiff, and by Mr. Joseph N. Teal and Mr. Clyde B. Aitchison, of counsel for said defendants; On Consideration Whereof, It is ordered and adjudged that the demurrer of said defendants to the Bill of Complaint herein be, and the same is hereby, sustained, that the motion of said complainant for a preliminary injunction be, and the same is hereby, denied, and that the restraining order heretofore entered herein be, and the same is hereby, continued in force for the period of twenty days from this date pending an application by said plaintiff for leave to amend its Bill of Complaint.

CHAS. E. WOLVERTON, *Judge*.

Order sustaining demurrer, etc. Filed Sept. 28, 1909. G. H. Marsh, Clerk, By J. W. Marsh, Deputy.

72 And Afterwards, to wit, on the 28th day of September, 1909, there was duly filed in said Court, an opinion, in words and figures as follows, to wit:

73 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOS. K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

W. W. Cotton for Complainant.
A. M. Crawford and Teal & Minor for Defendants.

This is a suit to restrain the Oregon State Board of Railroad Commissioners from putting into operation and effect a schedule of rates for carrying freight upon and along the complainant's lines of railroad in Oregon. The Attorney-General of the State is joined as a party defendant. The complainant is the owner of, and has now in operation, a system of railroad lines in Oregon, Washington, and Idaho, extending from Portland, Oregon, to Huntington, and from Umatilla and Pendleton, Oregon, to Spokane, Washington, and Wallace, Idaho, together with numerous branch lines extending from the main line of the system. This system of railroads has connection with other systems extending elsewhere, in other states than those named, wherewith joint traffic is maintained. The bill of complaint attacks the validity of the Act of the Legislative Assembly of the State of Oregon, adopted February 18, 1907, in pursuance of which the State Railroad Commission was created and its powers
74 were conferred, upon the ground that it is unconstitutional and void within the limitations of the State Constitution, and

that its operation is to deprive the complainant of its property and services without due process of law, contrary to the Federal Constitution. The act is, by exhibit, set out in full. Under the act, it is made the duty of the Attorney-General to enforce the provisions thereof, and to prosecute any violation of its mandates.

More specifically, it is alleged that the complainant has physical connection with the Oregon Short Line and the Union Pacific railways, and these have a like connection with various lines of railroad owned and operated by the Chicago & Northwestern Railway Company, the Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, and that, by reason of these connections, and through tariffs published and established by the various companies concerned, merchandise and commodities of all kinds have moved from Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, St. Louis, and points and places located upon the east of the Missouri River, to Portland, and to places east of The Dalles reached by the lines of the complainant; that the Union Pacific, the Oregon Short Line, and the complainant issued a tariff, designated U. P. R. R. I. C. C. No. 1578, covering the transportation of freight between the points named and Missouri River common points to various stations on complainant's line east of The Dalles, other than the station at Pendleton, Oregon, which was duly filed with the Interstate Railroad Commission, and became operative January 2, 1904, and is in effect and operation, with some
75 amendments, at the present time; that the complainant and various other companies promulgated a tariff, naming class and commodity rates, effective January 18, 1904, from New York and common points, and from Pittsburg, Chicago, and Mississippi and Missouri River common points, to certain North Pacific Coast terminals, including Portland, Oregon, and designated Trans-continental Freight Bureau No. 4-C, better known as the Transcontinental Terminal Tariff; that the complainant has now in effect and operation upon its lines a freight tariff, naming class and commodity rates based upon the existing Western classification, between Portland, East Portland, Albina, and St. Johns, Oregon, and all stations on its lines in Oregon, Washington and Idaho, which tariff became effective January 1, 1907, and is designated No. L-525, I. C. C. No. 1146; that complainant and the San Francisco & Portland Steamship Company, which latter company is now engaged in operating a line of steamers between Portland and San Francisco, have heretofore issued, and have now in operation, a joint freight tariff between San Francisco, California, and Portland and points on complainant's lines in Oregon east of The Dalles, which is designated O. R. & N. I. C. C. No. 967; that the rates so fixed and established are made up by adding certain arbitraries or local rates to the rates fixed and established by tariff No. L-525 from Portland to various points and places in Oregon east of The Dalles; that the Southern Pacific Company, the railway lines of which have physical connection with the lines of complainant, and complainant have adopted, and have now in operation and effect,
76 a joint tariff covering transportation from San Francisco and other points in California, to Portland, Oregon, and to all

points in Oregon east of The Dalles, which tariff is designated Southern Pacific I. C. C. No. 2130; that the through rates from California to Points east of The Dalles in Oregon consist mainly of a combination of the rates fixed by tariff No. L-525 from Portland to such points east of The Dalles, and certain arbitraries or local rates; that, under date of April 22, 1908, the Railroad Commission of Oregon made and entered an order, in a proceeding instituted before said commission by the Portland Chamber of Commerce against the complainant, which was served upon complainant on April 23, 1908, and was to become effective twenty days thereafter; that in and by said order it was found and declared, among other things, that the class rates now in effect under tariff No. L-525, with supplements amendatory thereto, over and upon complainant's main, branch, leased and otherwise controlled lines in Oregon, between the City of Portland and all points in Oregon east of The Dalles, were and are unjust and unreasonably high, and complainant was directed to desist from charging any higher rates for transportation between points designated than the class rates prescribed by said order, and that, in lieu of said class rates established by said tariff No. L-525, the complainant should substitute and adopt the class rates specified in said order, which were and are, as it relates to all points east of The Dalles, greatly less than the rates established by tariff No. L-525 covering the same points; that at least seventy per cent of the traffic carried, and hereafter to
77 be carried, from Portland to points on complainant's lines east of The Dalles in Oregon, under the rates fixed by tariff No. L-525, originates, and will originate, at points along or east of the Missouri River or in California, and is and will be first transported to Portland, and from thence under the class rates of L-525, or under the class rates fixed by the order of the Railroad Commission of Oregon, and that large quantities of like kind of goods are transported directly from the East to points in Oregon east of The Dalles, by complainant and allied lines, at and under the rates fixed by U. P. Tariff No. 1578, and from points in California to points in Oregon east of The Dalles at rates fixed and established by tariffs in force from California to points in Oregon east of The Dalles, as alleged; that by U. P. Tariff No. 1578 it is provided that, where the rate from the point of shipment added to the local rate under L-525 from Portland to points east of The Dalles is lower than the through rate under said tariff No. 1578, the combination rate shall govern; that the tariff rates fixed by tariff No. 1578 applying to points on complainant's lines in Oregon east of The Dalles, and particularly the class rates, are generally higher than the combination rates, and that the commodity rates fixed by such tariff No. 1578 are generally somewhat less than the combination of the transcontinental terminal to Portland added to the tariff under L-525, but that such commodity rates so fixed by tariff No. 1578 are greater than the combination transcontinental and the rates fixed by the Railroad Commission to said points east of The

Dalles; that, should the Railroad Commission's order become
78 operative, it would affect not only the interstate rates specifically mentioned, but each and every other interstate rate now in force and effect from the Missouri River common points and points east thereof to points in Oregon east of The Dalles, and from points in California to like points in Oregon; that the said order of said Railroad Commission necessarily amounts to an attempted regulation of commerce between the several states; that, should complainant attempt to comply with the order, it would be compelled to violate the Act of Congress and the regulations promulgated by the Interstate Commerce Commission, and in this particular said order is an attempt to regulate interstate commerce, and is void; that the rates established by tariff L-525 are lower than the rates established for the transportation of similar traffic from any point on complainant's lines other than Portland to any other point on complainant's lines in Oregon, Washington, or Idaho, and the rates established by said tariff No. L-525, from Portland to points east of The Dalles, are lower than the rates charged by any other railroad company in Oregon, Washington, or Idaho, for the transportation of similar traffic for the same distance; that the rates attempted to be established by the said order are lower than the rates fixed and established by said tariff No. L-525, and are unreasonably low, and are unjust to complainant; that, while the immediate effect of such order, if it could be confined strictly to the State of Oregon, might leave complainant a fair income upon its entire business, nevertheless, if the rates attempted to be established by the said order be applied to the interstate business directly affected thereby, and if the percentage of reduction effected by such order be applied to the local business of complainant in the States of
Oregon, Washington, and Idaho, which local business is now
79 being transacted upon rates higher than those fixed by tariff L-525, it will operate to confiscate the property of complainant and deprive it of property without due process of law, in violation of the Constitution of the United States, because such reduction will leave complainant without any fair net earnings upon its property; that the rates charged by complainant between Portland and The Dalles, as established by L-525, are unreasonably low, made so by reason of water competition; that by the order of the Railroad Commission, the rates to points east of The Dalles are based upon the rates charged by complainant between Portland and The Dalles, and the rate of increase of the rates to points east of The Dalles fixed by said order is unreasonably low and unjust to complainant, and has the effect of making the rate to points east of The Dalles unreasonably low, and to some points east of The Dalles less than the rates to The Dalles, and therefore the order has provided that the rates to points east of The Dalles shall equal the present rates to The Dalles when the application of the formula prescribed would reduce the rates below the present rates between Portland and The Dalles; that the application of the present rates between Portland and The Dalles to points beyond The Dalles renders them unreasonably low and unjust to complainant; that the said order of the

Railroad Commission fixes the rates upon complainant's branch lines the same for equal distances as upon its main line, but that the cost of service upon said branch lines, and each of them, is much greater than upon the main line, so that the rates fixed by said order
80 upon complainant's branch lines are unreasonably low; that, by operation of the said order, complainant will be permitted to charge but two cents more for hauling from Portland to Baker City than from Portland to La Grande, upon first-class freight, one cent more upon second, third, fourth, fifth, A and B classes, and nothing additional upon C, D and E classes, but that a difference is made in the rates to La Grande as compared with the rates to Pendleton of from five to twenty-five cents per 100 pounds upon the various classes, and a difference in the rates to Pendleton as compared with the rates to Umatilla of from three to fifteen cents per 100 pounds; that such adjustment of rates is arbitrary and unreasonable, and is founded upon no circumstance and condition affecting the cost and value of service.

It is furthermore charged in the bill that no adequate or proper remedy is afforded for the protection of complainant against the alleged injustice of the tariff fixed by the order of the State Railroad Commission, and that the penalties prescribed for violation of the order are so severe and drastic as to render it confiscatory for complainant to attempt to litigate against an order, or to maintain its rights and have reasonable rates established affecting traffic upon its lines. Further, that the act of the Legislative Assembly of the State of Oregon creating said Railroad Commission is unconstitutional, for that it attempts to accord to said commission all the powers of government, namely, legislative, executive, and judicial.

Coupled with all these charges is the usual averment that the commission and the Attorney-General are threatening to put
81 the tariff established by the commission into effect, and to prosecute complainant for any disregard of the provisions thereof.

A preliminary injunction is sought, and finally a decree declaring such State Railroad Commission Act to be unconstitutional and void, insofar as it may affect the complainant. The order of the Railroad Commission is as follows:

"It is therefore ordered, considered and determined that the defendant company, The Oregon Railroad and Navigation Company, shall cease and desist from charging any higher rates within this state for the transportation of merchandise and other commodities from the City of Portland to points on the defendant company's main, branch, leased or otherwise controlled railroad lines within the State of Oregon, covered by the class rates in said tariff, No. L-525, O. R. C. No. — I. C. C. No. 1146, than the class rates prescribed in this order, and the said railroad company in lieu of the rates herein ordered discontinued shall substitute the following maximum rates:

"Reduce first class rates from Portland to all points East of The Dalles, except where, under the existing tariff the rates are now less than prescribed herein by an amount equal to one sixth of the difference between twenty-five cents (the existing first class rate to

The Dalles), and the existing first class rate to such point, and reduce all other class rates between Portland and points East of The Dalles, with the exception above noted, so that it will bear the same relation to the first class rate as is provided in the distance tariff of the said defendant railroad company, to-wit:

	Classes.									
	1	2	3	4	5	A	B	C	D	E
Per cent of first class....	100	85	70	60	50	50	40	30	25	20

"It is further ordered, considered and determined, That the rates under the existing tariff shall not be exceeded on any class to any points covered by said tariff nor to apply to or change any rate now in effect that is lower than the rates prescribed by this order.

"The rates prescribed by the foregoing order shall be effective on and after the — day of —— 1908, and the defendant company is given until the — day of ——, 1908, to prepare and file new tariffs in accordance with the provisions of this order.

"It is recommended that the defendant railroad company make a similar adjustment of its distance tariff and its tariffs on various staple commodities, such as grain, wool and other commodities within the state of Oregon."

The controlling provisions of the State Railroad Commission Act, insofar as they may pertain to this controversy, are in substance as follows:

82 It creates a Railroad Commission, to be composed of three persons elected by the people, but appointive until an election is held. §1.

The commission is given power to adopt and promulgate rules and orders to govern its proceedings, and to amend the same, and to regulate the mode and manner of all investigations and hearings of railroads and other parties before it. §9.

The term "railroad" is defined to embrace "all corporations, companies, individuals, associations of individulas," etc., "that now, or may hereafter, own, operate by steam, electric or other motive power, manage or control, any railroad or interurban railroad or part of a railroad or interurban railroad as a common carrier in this State." And the provisions of the act are made to apply to the transportation of passengers and property, and to all railroad companies, etc. "that shall do business as common carriers upon or over any line of railroad within this State." §11.

Every railroad is required to furnish reasonably adequate service, equipment and facilities, and the charges made for the services rendered are also required to be reasonable and just. Every unjust and unreasonable charge for such services is prohibited and declared to be unlawful. §12.

Every railroad is required to print and file with the commission a schedule of its rates and joint rates existing between all points in the State upon its lines, or any line controlled or operated by it. §13.

Changes in schedules are to be made only upon notice and filing of copies of new schedules with the commission. §14.

"It shall be unlawful for any railroad to charge, demand, collect or receive a greater or less compensation for the transporta-
83 tion of passengers or property or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, and the rates, fares and charges named therein shall be the lawful rates, fares and charges until the same are changed as herein provided." §16.

But one classification of freight shall exist in the State, which shall be uniform on all railroads. §20.

Upon complaint that any rates, fares, charges or classifications are in any respects unreasonable or unjust, the commission may, upon ten days' notice to the railroad company complained against, proceed to investigate the same. If upon such investigation, the rates, fares, charges or classifications shall be found to be unreasonable, the commission is empowered to fix and order substituted therefor such rates, fares, charges or classification as it shall have determined to be just and reasonable. The commission may also proceed upon its own initiative as upon complaint by an individual, company, or corporation. §28.

Whenever, upon an investigation made under the provisions of the act, the commission shall find any existing rates, fares, charges or classifications, etc., unreasonable or unjustly discriminatory, it shall determine, and by order fix reasonable rates, fares, charges or classifications to be imposed, observed and followed in the future, in lieu of those found to be unreasonable, and it shall cause a certified copy of such order to be delivered to an officer or station agent of the railroad affected thereby, which order shall, of its own force,
84 take effect and become operative twenty days after the service thereof. All railways to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any railroad in any such rates, fares or charges without the approval of the commission. §30.

"All rates, fares, charges, classifications and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices, and service prescribed by the commission shall be in force and shall be prima facie reasonable, until finally found otherwise in an action brought for that purpose pursuant to the provisions of sections 32, 33, 34, and 35 of this Act." §31.

Any railroad feeling aggrieved by the acts of the commission in fixing or regulating rates and fares may commerce suit in the Circuit Court of Marion County against the commission to vacate and set aside its order relating thereto, on the ground that the rates and charges so fixed are unlawful. The commission is required to answer within ten days after service of the complaint upon it, and thereupon the cause is deemed at issue, and shall stand ready for trial upon ten days' notice by either party. All suits brought under this section shall be tried and determined as causes in equity, and

shall have precedence over any civil cause of a different nature pending in said court, which court shall always be deemed open for the trial of such controversies. The burden of proof is cast upon the complainant in trials arising under this section and sections 33, 34, and 35, to show, by clear and satisfactory evidence, that the order of the commission complained of is unlawful or unreasonable. §32.

85 "No injunction shall issue suspending or staying any order of the commission except upon application to the circuit court or presiding judge thereof, notice to the commission, and hearing, and upon the giving of such bond or other security and upon such conditions as the court may require; and if such order of injunction suspends the order or requirement of the commission fixing rates, then the court shall require a bond with good and sufficient surety conditioned that the railroad or railroads applying for such injunction shall answer for all damages caused by the delay in the enforcement of the order of the commission and all penalties that would attach against the said railroad and all compensation for whatever sums for transportation service any person or corporation shall be compelled to pay in excess of the sums such person or corporation would have been compelled to pay if the order of the commission had not been suspended; and such bond shall cover the periods transpiring from time of the issuance of any such injunction until the final determination of the question litigated. The said bond shall be executed in favor of the Railroad Commission of Oregon for the benefit of whom it may concern and shall be enforceable by said commission or any person interested in an appropriate proceeding. Any person paying charges found to be excessive shall have a claim for the excess, whether paid under protest or not, and unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such railroad, or such railroad and the sureties on such bond. Claims of persons for money collected in excess of the amount payable under the rate or rates established by the commission shall be assignable in the same manner as any chose in action. No appeal to the Supreme Court shall stay the operation of any order of the commission unless the circuit or Supreme Court shall so direct, and unless the railroad so appealing shall give a bond with like conditions and terms as that given on granting injunctions suspending an order of the commission fixing rates." §33.

"If, upon the trial of such suit, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or additional thereto, the court before proceeding to render judgment, unless the parties to such suit stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, fares, charges, classification, joint rate or rates, regulation, practice, service or equipment complained of

in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence. If the commission shall rescind its order complained of, the suit shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment or decree shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order." §34.

86 "Either party to said suit, within sixty days after the entry of the judgment or decree of the circuit court, may appeal to the Supreme Court. Where an appeal is taken the cause shall, on the return of the papers to the Supreme Court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar, but shall have precedence over civil causes of a different nature pending in said court." §35.

"The commission shall have power, and it is hereby made its duty to investigate all freight rates on interstate traffic on railroads in this State, and when the same are, in the opinion of the commission, excessive or discriminatory or are levied or laid in violation of the interstate commerce law, or in conflict with the rulings, orders or regulations of the Interstate Commerce Commission, the commission shall present the facts to the railroad, with a request to make such changes as the commission may advise, and if such changes are not made within a reasonable time the commission shall apply by petition to the Interstate Commerce Commission for relief. All freight tariffs issued by any such railroad relating to interstate traffic in this State shall be filed in the office of the commission within thirty days after the passage and publication of this Act, and all such tariffs thereafter issued shall be filed with the commission when issued." §47.

"If any railroad shall do or cause to be done or permit to be done any matter, act or thing in this Act prohibited, or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such railroad shall be liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case; provided, that any recovery as in this section provided, shall in no manner affect a recovery by the State of the penalty prescribed for such violation." §51.

"Any officer, agent or employee of any railroad who shall fail or wilfully refuse to fill out and return any blanks as required by this Act, or shall fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such question, or shall evade the answer to any such question, where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or wilfully refuse to exhibit to the commission or any commissioner, or any person authorized to examine the same,

any book, paper or account of such railroad, which is in his possession or under his control, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each such offense; and a penalty of not less than five hundred dollars nor more than one thousand dollars, shall be recovered from the railroad for each such offense when such officer, agent or employee acted in obedience to the direction, instruction or request of such railroad or any general officer thereof." §52.

87 "If any railroad shall violate any provision of this Act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement, order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure or refusal, such railroad shall forfeit and pay into the State treasury a sum of not less than one hundred dollars, nor more than ten thousand dollars for such offense. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent, or other person acting for or employed by any railroad, acting within the scope of his employment, shall in every case be deemed to be the act, omission or failure of such railroad." §53.

"The commission shall have power when deemed by it necessary to prevent injury to the business or interests of the people or railroads of this State in consequence of interstate rate wars, or in case of any other emergency to be judged of by the commission, to temporarily alter, amend, or, with the consent of the railroad company concerned, suspend any existing passenger rates, freight rates, schedules and orders of any railroad or part of railroad in this State. Such rates so made by the commission shall apply on one or more of the railroads in this State or any portion thereof as may be directed by the commission, and shall take effect at such time and remain in force for such length of time as may be prescribed by the commission." §54.

"The commission shall inquire into any neglect or violation of the laws of this State by any railroad corporation doing business therein, or by the officers, agent, or employees thereof, or by any person operating a railroad, and shall have the power, and it shall be its duty, to enforce the provisions of this Act as well as all other laws relating to railroads and report all violations thereof to the Attorney-General; upon the request of the commission it shall be the duty of the Attorney-General or the prosecuting attorney of the proper county to aid in any investigation, hearing, or trial had under the provisions of this Act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this Act or the recovery of penalties payable to the State, and of all other laws of this State relating to railroads, and for the punishment of all violations thereof." §57.

"This Act shall not have the effect to release or waive any right of action by the State or by any person for any right, penalty or

forfeiture which may have arisen or which may hereafter arise under any law of this State; and all penalties and forfeiture accruing under this Act shall be cumulative and a suit for, and recovery of one, shall not be a bar to the recovery of any other penalty." §60.

A restraining order was issued upon application of the complainant, and subsequently the defendants demurred to the
88 bill.

WOLVERTON, *District Judge:*

This case has been submitted both upon the demurrer to the bill and upon application for a preliminary injunction. Logically, the demurrer should be first considered. The allegations of the bill to the effect that the Railroad Commission Act of Oregon and the order of the commission, made in pursuance thereof, fixing the rates complained of are an invasion of the exclusive right of Congress to regulate interstate commerce, that the rates so fixed and established are unreasonable and unjust, and that complainant is practically inhibited from having the question as to whether they are in fact unreasonable and unjust adjudicated by a tribunal of justice by reason of the supposed drastic penalties imposed for an attempt to obtain such an adjudication, beyond dispute present Federal questions for decision, and this court has jurisdiction of the controversy. This would be true whether complainant's position were maintainable or not in fact, for that is not to the purpose. The Federal questions remain, and afford basis for interposition by the Federal courts. It is unnecessary to cite authorities in support of this position.

Three questions are urged as arising under the Federal Constitution, all of which challenge the validity of the order of the Railroad Commission. They are as follows:

First. That the order, if effective, regulates interstate commerce.

Second. That by reason of the exorbitant and drastic penalties imposed by the act for the violation of any order adopted by the Railroad Commission, such act in practical effect deprives
89 the complainant of the equal protection of the laws, and subjects its property to be taken without due process of law; and

Third. That the ultimate effect of the order, if operative, will be to prevent the complainant from making fair net earnings, and will thus deprive the complainant of its property without due process of law.

Two other questions, not Federal, are also urged, namely:

First. Whether the rates established by the order of the commission are reasonable; and,

Second. Whether the Oregon Legislative Assembly, by such act, conferred upon the Railroad Commission legislative, executive, and judicial functions in violation of the provisions of the State constitution.

If any of these questions be answered in the affirmative, the work of the Railroad Commission must fail of its purpose. They

will be examined, beginning with the last, and the others in the order of their statement.

We are to determine the validity of the act from its provisions. Does the act combine, in a legal and constitutional sense, legislative, executive, and judicial functions of government, and empower the Railroad Commission to exercise the same? Under the State Constitution the powers of government are divided into three separate departments, namely, the legislative, the executive (including the administrative), and the judicial; and no person charged with the official duties under one of these departments is competent to exercise any function of the other, except as provided in the Constitution itself.

§1, Art. III, Constitution of Or.

This is an express declaration of the segregation of the powers of government. The Constitution of the United States as of-
90 fectively segregates such powers of government, but without an express declaration to that effect. That instrument provides (§1, Art. I), that "All legislative powers herein granted shall be vested in a Congress of the United States;" (§1, Art. II), that "Executive power shall be vested in a president of the United States;" and (§1, Art. III), that "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish."

Thus it is that, while the powers of government under the National Constitution are actually apportioned to or divided into three departments, there is no express declaration that they shall be so apportioned or divided. The thing is done by establishing, severally, each of the three departments of government, and they are as effectually separate departments as if the Constitution had in so many words so declared, as does the State Constitution. In legal effect, therefore, there is no difference between the division of governmental functions under the one constitution as compared with the other, save that the administrative powers are included with the executive in the State government.

The principle of the segregation of the three functions of government was not a concept incident to Revolutionary times leading to the adoption of the American Constitution, but a maxim having its outgrowth from the British Constitution, the meaning of which is, as interpreted by Mr. Madison in one of his notable contributions to The Federalist, that:

"Where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted."

The Federalist, p. 375.

91 The concept is the more readily discernable through the works of Montesquieu. He says:

"There can be no liberty, where the legislative and executive powers are united in the same person, or body of magistrates;" or, "if the power of judging be not separated from the legislative and executive powers."

Under the British Constitution, while there is a separation of these distinctive departments of government, there remains a blending more or less of the powers. As, for instance, the executive retains the prerogative of making treaties, which, under certain limitations, have the force of legislative acts. The members of the judiciary are appointed by the executive. One branch of the legislative department acts as constitutional adviser to the executive; while, on the other hand, it has the sole power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. So also the judiciary is so far connected with the legislative department as to participate in its deliberations, although not entitled to a legislative vote.

In the Colonial times of the 17th century, the legislatures were chosen by the people. The executive, with two exceptions, *were* appointed by the Crown, and the judges were nominated by the executive, and usually with the assent of the council so that there was a conformation to the idea of a three-fold division of government; but the lines of division were not cast upon fixed principles. Experience under a Republican form of government has strengthened the concept of holding separate and distinct the three estates of governmental function, and in some measure marked more distinctly the lines of cleavage. Neither the National Con-
92 stitution nor the constitution of any state under the Union has eliminated entirely the blending, to a greater or less extent, of these co-ordinate powers; nor does it seem possible that such a thing can be accomplished in practical operation.

Without allusion to the blending of these co-ordinate powers under the Federal Constitution, which is somewhat greater than under the State constitution, I may make reference shortly to the provisions under the State Constitution which, to an extent at least, are a trenching of one branch of the government upon the powers and functions of the other. The legislative may regulate the practice in the courts of justice, and it does in practice fix the salaries of the executive and the members of the courts of justice; and it may sit in judgment of removal of the judges from office. The executive is invested with the veto power upon acts of the legislature, it may grant pardons, and may remove from office a judge of the Supreme Court upon the joint resolution of the Legislative Assembly. The judiciary may determine the constitutionality of any law adopted by the Legislative Assembly. Those things are permissible, it is true, under the direct provisions of the fundamental law, but the necessity of their adoption demonstrates the impossible condition of fixing absolute lines of cleavage so that there will be no trenching, in any degree or measure, of the functions of one department upon those of another. Indeed, there must be some latitude in this direction in order to the greatest practical exercise of the coordinate powers conferred. In other words, there is no absolute line of cleavage in governmental range, under this concept of a republic, that will leave the one department
93 absolutely free from the domination in some way or measure of the other. Further than this, the very concept itself, or

the maxim, as our forefathers were wont to call it, carried with it the idea that the powers of one department should be adaptable in their exercise to operate as a check and balance upon the appropriate powers of the other. There can never be established in practice, I apprehend, an exact line of division in the exercise of these powers. Mr. Thorpe might well remark, as he does in his work entitled "The Constitutional History of the United States," (Vol. 1, p. 14), speaking of the colonial conditions of the 17th century, that:

"The so-called three political estates, the legislative, the executive and the judiciary, seem ever to have been as they are with us today, in a state of flux."

The course of development in the concept of the three estates in government in colonial usage has been to curtail the original powers of the legislative, and to increase the powers of the other two departments. For instance, the governor of the colonies could not veto bills nor grant pardons or reprieves. The governor can now do so under most, if not all, of the State constitutions; and the legislatures are shorn of their authority in most, if not all, instances to sit as courts of appeal in judicial controversies. The State constitutions, as well as the Federal Constitution, are creative of these checks and balances which have been deemed most advantageous to the beneficial operation of good government, and as securing the broadest liberty to the people. The idea of a three-department government is, therefore, common to all the State constitutions, as well as to the Federal Constitution, but provisions vary ap-
94 preciably as to the delegation of powers that may be exercised by the one department or the other. None of them, however, break on a strict line of legislative, executive, and judicial functions. Nor in the exercise of these powers has it been possible, or found expedient, to observe with exactness absolute lines of cleavage. In support of these observations, Mr. Justice Story, in his work on the Constitution, has this to say:

"But when we speak of the separation of the three great powers of government, and maintain that the separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments, and that such exercise of the whole power would subvert the principles of a free Constitution."

These observations are sufficient to indicate the scope and meaning of the maxim. Let us now inquire what the judicial construction has been as it pertains to a measure of the sort here under consideration.

As the division of the three departments of government is framed upon essentially the same lines under the Federal Constitution as under the constitution of the State of Oregon, we should

look first to the adjudications in these jurisdictions. There has been but one case decided in the State court that has relation to the subject. State v. Southern Pacific Company, 23 Or. 424. The suit was instituted to enforce the schedule of rates fixed by a railroad commission constituted by act of the legislature. The commission, it seems, was empowered to fix rates for transportation of freight, and if a compliance with its order in this respect was refused then to institute a suit in the name of the State for the purpose of
95 enforcing obedience thereto. The commission prevailed in the suit, and the railroad company was required, at the hands of the court, to conform to the order of the commission fixing the rates; but no question was raised as to the constitutional authority or power of the commission to fix such rates, or as to whether, in fixing such rates, it exercised a legislative, judicial, or administrative function; it being apparently conceded that its powers were adequate in respect of making rates, insofar as they were reasonable.

Advancing now to the Federal adjudications, it may be observed that the Railroad Commission Act of the State contains many features and regulations quite in common with the Interstate Commerce Act of Congress and its amendments (1 Supplement to R. S. 529, 684, 891); the signal difference between the two acts being, that in the former the commission is empowered to fix the rates, which, when fixed, are made prima facie reasonable and just, and, if controverted by an interested party, the burden is cast upon such party to institute the proper proceedings or suit, and to overcome the prima facie case by proof to the contrary, while in the latter the commission orders and directs changes to be made in rates, if found to be unreasonable and unjust, and the rates named by the commission are deemed to be, prima facie, reasonable and just, and if the interested party refuses to obey the orders of the commission naming the rates, the commisison is authorized to enforce obedience by a suit in the Federal Court. In such a suit the party contesting has the burden of overcoming the prima facie case of the reasonableness of the rates directed by the commission for adoption, and must do so in its defense, or the commission's order will
96 stand. The difference in the procedure consists chiefly in this: that in the one case the carrier must sue to overcome a prima facie case; while in the other the commission must sue to enforce its order, and the carrier must overcome the prima facie case by its defense. This further difference may be noted in the policy of the two acts—the former enforces its behests and the findings and orders of the commission by the imposition of fines and penalties, while the latter must resort, more generally, to the circuit court, by remedial action or suit, for an enforcement of the law's mandate and its own recommendations and orders. As to the constitutionality of the Interstate Commerce Act, there seems to be no question. At least, so far as I am aware, there has been no case declaring it unconstitutional or invalid in any particular, while many cases have been determined under its provisions; so that the act stands as a perfectly valid and legitimate regulation for the control and conduct of interstate transportation lines and facilities.

Keeping in mind, therefore, the chief distinctions specified between the two acts, we shall be enabled to determine more readily whether the state statute is unconstitutional or invalid in the particulars complained of. Remarking upon the general subject of legislation in relation to the regulation of interstate commerce, in the case of Interstate Commerce Commission v. Brimson, 154 U. S. 447, 474, Mr. Justice Harlan has this to say:

"All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced, otherwise than through the instrumentality of an administrative body, representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules."

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In Mississippi a railroad commission act was adopted intrusting a commission with supervision over tariff charges, with authority to continue such charges from time to time, and to increase or reduce any of said rates according as experience and business operation might justify, and to fix tariffs of charges for those railroads failing to furnish schedules as required. This act was sustained by the Supreme Court of the State, wherein was made the contention that the statute was repugnant to the Constitution of the State because it created a commission and charged it with the duty of supervising railroads. The Supreme Court of the United States concurred in the view, in a cause involving the same controversy being one among those known as the Railroad Commission cases. See Stone et al. v. Farmers' Loan & Trust Co., 116 U. S. 307. The constitution of the State of Mississippi is in purport the same as the Oregon constitution as it respects the division of departments of government, and it contains no special authorization for the establishment of a railroad commission with special powers. The Federal case would seem, therefore, to be strongly authoritative of the validity of the Oregon Act, although there is but little discussion of the principle involved. In 1888 the question came up in Iowa, under an act of the legislature of that state providing a railroad commission, and defining its duties. The commission was empowered to make schedules of reasonable and maximum rates, and a penalty was annexed for disobedience on the part of railroad companies in the charging and collecting of tolls and compensation which were unreasonable and unjust. The validity of this act was called in question by a suit instituted in the Federal Circuit Court—Chicago & N. W. Ry. Co. v. Dey, 35 Fed. 866—Mr. Justice Brewer presiding. The proposition was advanced that the law was unconstitutional because it seemed to delegate legislative power. After stating the settled rule of law, as determined by what are known as the Granger Cases, and others following them (Munn v. Illinois, 94 U. S. 113; Chicago, etc., R. R. Co. v. Iowa, 94 U. S. 155; Peik v. Chicago, etc., Railway Co.,

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94 U. S. 164), that the power of fixing rates is purely legislative, the court says:

"There is no inherent vice in such a delegation of power; nothing in the nature of things which would prevent the state, by constitutional enactment at least, from intrusting these powers to such a board; and nothing in such constitutional action which would invade any rights guaranteed by the federal constitution. So that, after all, the question is one more of form than of substance. The vital question with both shipper and carrier is that the rates shall be just and reasonable, and not by what body they shall be put in force."

As a third reason, he continues:

"While, in a general sence, following the language of the Supreme Court, it must be conceded that the power to fix rates is legislative, yet the line of demarcation between legislative and administrative functions is not always easily discerned. The one runs into the other. The law books are full of statutes unquestionably valid, in which the legislature has been content to simply establish rules and principles, leaving execution and details to other officers."

And he concludes as follows:

"While, of course, the argument for inconvenience cannot be pushed too far, yet it is certainly a matter of inquiry whether in the increasing complexity of our civilization, our social and business relations, the power of the legislature to give increased extent to administrative functions must not be recognized."

After an examination of the few authorities then extant bearing upon the subject, among which he cites Stone v. Trust Co., supra, he sums up that:

99 "All the authorities that have been cited, or that I have been able to find, bearing upon this precise question, are in favor of the constitutionality of such a delegation of power."

The Iowa constitution provides for a distribution of powers in almost the identical terms of the Oregon constitution, save that the executive is not made to include the administrative functions, and no special provision is made otherwise for the establishment of a railroad commission. Subsequently a case arising in Texas, which challenged the constitutionality of a railroad commission created by the legislature of that state, was determined in the Supreme Court of the United States. Reagan v. Farmers' Loan & Trust Co., 154 U. S. 362. The distinguished jurist who wrote the opinion in the last case above cited wrote the opinion in this. The constitutional provision in Texas as to the distribution of powers is as follows:

"The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instance, herein expressly permitted."

No special provision is otherwise made in the constitution for creating a railroad commission. The commission, under the act called in question, was empowered to classify and fix rates of compensation for carriage of freight, upon giving appropriate notice to the railroad company affected; it being further provided that, when a railroad company or party in interest was dissatisfied with the decision of any rate, classification, rule, etc., such company or party might file a petition in a court of competent juris-
100 diction, in Travis County, Texas, against said commission as defendant, and that the reasonableness of the rate, or charge, or classification might there be determined. Note the similarity of these provisions to those of the Oregon act. Stringent penalties are provided for failure on the part of the railroad company affected to comply with the order and directions of the commission. The act was first called in question because of the drastic penalties imposed for any violation of its provisions. As to this, it was decided that the clauses providing punishment might be stricken out, and the act stand as valid law for the regulation of the rates of traffic. As to the question here under discussion, Mr. Justice Brewer says:

"Passing from the question of jurisdiction to the act itself, there can be no doubt of the general power of a State to regulate the fares and freights which may be charged and received by railroad or other carriers, and that this regulation can be carried on by means of a commission. Such a commission is merely an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation. Railroad Commission Cases, 116 U. S. 307. No valid objection, therefore, can be made on account of the general features of this act; those by which the State has created the railroad commission and entrusted it with the duty of prescribing rates of fares and freights as well as other regulations for the management of the railroads of the State."

Thus is approved the general policy of the act, as well as every provision thereof save the clauses pertaining to penalties for violation. It is worthy of note that the law had now advanced to such a state of development and certainty that the learned justice was no longer in doubt as to the propriety and constitutionality of such an act. His language is now positive and unequivocal. This is now without question the settled doctrine of the Federal courts. A late case upon the subject is Atlantic Coast Line v. North Carolina Corporation Commission, 206 U. S. 1. At page 19 the court,
101 speaking through Mr. Justice White, has this to say:

"The elementary proposition that railroads from the public nature of the business by them carried on and the interest which the public have in their operation are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine."

Mr. Noyes, in his work on American Railroad Rates, lays down the following as the law in the premises:

"The legislature cannot delegate its power to make laws. Statutes

can be enacted only by the agency created by the constitution for the purpose. But when the legislature has adopted general rules, it may delegate the power to apply them to specific facts, and to exercise discretion in respect thereto. A commission may be created to perform legislative functions of a quasi-administrative character. When the legislature has declared that railroad rates shall be reasonable and just, it may authorize a commission to fix the specific charges. Any other conclusion would practically prevent the legislature from exercising its power to make rates. The country is so large, the railroads so numerous, and conditions so variable and changeable that direct rate making by the legislature, with annual or biennial sessions, would be wholly out of the question. Moreover, legislatures are not adapted to pass upon the matters of detail necessary in making rates. * * *

When a commission, in the exercise of power delegated by the legislature, makes a rate the result is the same as if the legislature directly acted. The act of the commission supplements and makes effective the act of the legislature. The rate resulting from the joint action of the legislature and its agent is the law. Making a rate in legal effect is making a law that such shall be the rate."

So it is said in a very recent case, that has just come to my notice:

"It is true that the function of fixing rates is legislative in its nature, yet it seems well settled now that the creation of a commission, with power to fix rates, is not an unconstitutional delegation of legislative power."

Railroad Commission v. Central of Georgia Ry. Co. 170 Fed. 225, 238.

These authorities render it unnecessary to examine specifically the various state adjudications bearing upon the subject, especially as the three Federal cases, namely, Stone v. Trust Co., Chi-
102 cago & N. W. Ry. Co. v Dey, and Reagan v. Farmers' Loan & Trust Co., arose under state constitutions very similar in the arrangement of the departments of government to the Oregon constitution, and thus, being Federal cases, they have peculiar force and applicability here. I may cite, however, the case of State v. Missouri Pac. Ry. Co., 92 Pac. 606, which is very instructive, and is in full accord with the Federal adjudications.

Just when an act is the exercise of a legislative, when of a judicial, and when of an executive function is often difficult to determine. Mr. Justice Marshall says:

"The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law."

Wayman v. Southard, 10 Wheaton, 1, 46.

By this general definition we have not gotten very far in the way of submitting a rule for determining nice distinctions as to what of these functions are being exercised in all cases.

"And it is said," observes Mr. Cooley, in his work on Constitutional Limitations, p. 132, 7th Ed., "that that which distinguishes

a judicial from a legislative act is, that the one is a determination of what the existing law is in relation to some existing thing already done or happened, while the other is a predetermination of what the law shall be for the regulation of all future cases falling under its provisions."

Mr. Justice Holmes adopts this distinction with equal clearness, in Prentis v. Atlantic Coast Line, 211 U. S. 210, 226, and makes the deduction therefrom that:

"The establishment of a rate is the making of a rule for the future, and therefore is an act legislative not judicial in kind."

In Chicago & Grand Trunk Railway Company v. Wellman, 143 U. S. 339, 344, the court says:

"The legislature has power to fix rates, and the extent
103 of judicial interference is protection against unreasonable rates."

And in Chicago, Milwaukee and St. Paul Railway Company v. Minnesota, 134 U. S. 418, 458, that:

"The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination."

And so it was said in Interstate Commerce Commission v. Railway Co., 167 U. S. 479, 499, putting the two principles into juxtaposition:

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act."

With these two principles established, we may now determine whether the Railroad Comimsion Act transcends the constitutional mandate of the State of Oregon in segregating the three departments of government. The commission is empowered, upon complaint or upon its own initiative, and upon notice to the railroad company, to proceed to an investigation as to whether the rates charged are unreasonable or unjust, and, if found to be so, to thereupon fix and order substituted for the original rates such rates as the commission shall determine to be reasonable and just. The order becomes effective twenty days after the service thereof upon the company. The act makes the rates and charges thus fixed prima facie lawful and reasonable only until finally found otherwise in an action instituted as subsequently provided.

Now, it is urged that the act of the commission determining what rates are reasonable and fixing them for the future regulation
104 of the railroad company is a judicial act. Not so within the intendment of the law. It is first prescribed that all rates shall be reasonable. The railroad is subject to this injunction as well as the commission. When it transpires that the railroad company is not observing the law, then the commission is charged with the duty of fixing a rate for the company. This, the authorities say, is a legislative function, but it may be done through the instrumen-

tality of a railroad commission. The order of the commission being prima facie lawful and the rates fixed prima facie reasonable, it is provided that it shall become operative in due course unless the company is dissatisfied with the rates fixed by the commission. If so dissatisfied, the company is given a remedy for having judicially determined the reasonableness of such rates. There is language defining the duty of the commission in this relation, and delineating its procedure, that impresses one at first blush that it was designed that the commission should act judicially in determining this. But the fact that it is not made the final arbiter, that its order is only prima facie lawful, and the rates thereby fixed only prima facie reasonable, and that a court of constitutional judicatory is made the final forum in which to determine the reasonableness of such rates, demonstrates the true intendment of the commission act. The legislature can fix rates upon traffic, but in their establishment they must be reasonable. If unreasonable, the courts will declare them so. In fixing such rates, an investigation must necessarily precede the legislative action, but the law declares that the legislature may fix rates through a functionary called a commission, and when the commission acts, it is as if the legislature had fixed the rates. But,
105 like the rates established by the legislature, if unreasonable such rates are not binding upon the transportation companies affected. Recognizing this condition, the act in question has provided a remedy whereby the rates fixed may be judicially determined as it respects their reasonableness. The act of the commission being valid prima facie, the rates fixed become a law unto the carrier until a competent court declares them to be unreasonable. Just so with an act of the legislature fixing rates, because no law fixing unreasonable rates can bind the carrier. I see no legal or constitutional objection to the legislation proceeding in this way to a regulation of rates and tariffs upon transportation lines within the state.

That the burden is cast upon the carrier of first resorting to a court of justice for a determination of the reasonableness of the rate, if he desires to contest the action of the commission, rather than upon the commission to sue if resistance to the rate ordered to be observed is made, as provided in the Interstate Commerce Act, is not a distinction that differentiates the two acts in principle. In either case the carrier is given his day in a court of justice upon the question of the reasonableness of the rate prescribed, with the identical presumptions of law attending the controversy. So that if the Interstate Commerce Act of Congress is valid and constitutional in this respect, the state act ought to be also. And furthermore, that the Circuit Court of Marion County is named in the act as the forum to which the aggrieved carrier must resort for relief does not detract from the validity of the law, as the fact remains that a judicial tribunal is afforded in which to have
106 the question of reasonableness determined. The Texas act contained just such a provision, which act was approved in Reagan v. Farmers' Loan & Trust Co., supra. In realty, the resort to the Circuit Court of Marion County is part of the procedure by which the final test of the reasonableness of the rates might be deter-

mined if challenged by the carrier. It might be that the complainant would have no remedy in a court of equity here until it had exhausted its remedy in that particular court for determining the reasonableness of the rates contended for. See Prentis v. Atlantic Coast Line, supra. Mr. Justice Holmes there says:

"No rate is irrevocably fixed by the State until the matter has been laid before the body having the last word."

But see Smyth v. Ames, supra.

I do not presume to decide this question, however, as applied to the present controversy. It should be remarked that the court provided for acts judicially in determining the matter finally, not in a legislative capacity, so that there is not a combination of legislative and judicial functions in one person or body. The intendment of the act is that the Railroad Commission shall exercise the administrative power necessary to make the legislative act of fixing rates effective, and attend to the administration of the law, while the judiciary shall exercise the judicial power by passing upon the reasonableness of the rates fixed by the commission, when questioned.

Reliance is placed upon the case of Chicago, etc. Ry. Co. v. Minnesota, supra, as opposed to this view. Such, however, is not the doctrine of that case. The case came up by writ of error to
107 the Supreme Court of Minnesota. The commission act of the state regulating the fixing of rates and charges was considered valid by the court, and it was declared that:

"The expressed intention of the legislature is that the rates recommended and published by the commission (assuming that they have proceeded in the manner pointed out by the act) should be not simply advisory, nor merely prima facie equal and reasonable, but final and conclusive as to what are lawful or equal and reasonable charges; that, in proceedings to compel compliance with the rates thus published, the law neither contemplates nor allows any issue to be made or inquiry had as to their equality and reasonableness in fact. Under the provisions of the act, the rates thus published are the only ones that are lawful, and therefore, in contemplation of law, the only ones that are equal and reasonable; and, hence, in proceedings like the present, there is, as said before, no fact to traverse, except the violation of the law in refusing compliance with the recommendation of the commission."

Under this interpretation of the act, the Supreme Court of the United States declared the act to be in derogation of the right to a judicial investigation by due process of law. The question of the delegation of power was not discussed or determined. Nor was the supposed encroachment of one department of government upon another brought into dispute or controversy. The simple fundamental question was decided that such an act in its operation, as interpreted by the Supreme Court of Minnesota, deprived the transportation company of its right and property without due process of law.

Along with the contention that the railroad commission is empowered to exercise judicial functions is another—that it is also empowered under the act to exercise executive functions. It will

be noted that the executive department of government includes also the administrative. This widens very largely the scope of the functions of that department. By a reading of the Railroad Commission Act, it will be seen that the commission is charged with supervising and doing many things which are merely administrative.
108 Some are possibly executive upon a strict division of powers.

But this alone ought not to condemn the law. As I have previously observed, it is impossible to find an exact boundary line dividing these constitutional powers; that is to say, in providing for the innumerable exigencies arising for governmental supervision and control, it is not always possible to place the authority in every detail with the appropriate department of government. So that, as to the minor matters, it ought not to be considered inimical to the constitution if given into the charge of one department when they appropriately belong to another. The essential thing is that there shall not be a usurpation of the functions of one department by another department, so as practically to destroy or seriously to endanger the polity of a tripartite division of powers. Of course, there are many things that belong absolutely to the one department or the other. Where these are plain and important, they should be assigned to the appropriate department for administration, and if not so assigned, the law should not stand, because of the hurtful encroachment upon the proper domain of a department. But, where the assignment of power is scarcely distinguishable, or where it works no practical encroachment upon the functions of another department, it is difficult to see why such law should not stand.

Now, the commission is charged with many duties that are not executive, but purely administrative or ministerial. It must inquire into the management of the business of railroads, and shall keep itself informed as to the manner and method in which the same is conducted. Section 39 of the act.

It shall require annual reports. §40.
109 It may require a uniform system of accounting. §43.
It may require a list of passes to be furnished. §45.

And it shall make report to the Governor annually, and recommend such legislation as may be deemed important. §46.

All these things would seem to be merely administrative. Others would seem to be more nearly executive, as, for instance, the commission is empowered to make complaint before the Interstate Commerce Commission, with a view to rectifying excessive or discriminatory rates and charges. §47.

And it shall inquire into any neglect or violation of the laws of the state by any railroad corporation doing business therein. It is also made its duty to enforce the provisions of the act here in question, as well as all other laws relating to railroads. §57.

But this commission is no exception to the creation of administrative officers and boards of commission, charged with like and kindred duties. The legislature has created a Board of Canal Commissioners; a Board of Fish Commissioners; a Board of Agriculture; an Insurance Commissioner—the Secretary of State being made, ex officio, such commissioner; a Food and Dairy Commissioner; a Com-

missioner of the Bureau of Labor Statistics and Inspection of Factories and Workshops. It is especially made the duty of this latter officer to cause to be enforced all the laws regulating the employment of children, minors and women—a function executive in character, for the executive department is charged with the duty to see that the laws are faithfully executed. But all these boards and officers, in the general scope of their powers, are charged with administrative rather than executive duties. Such is the
110 character of the Railroad Commission Act, so that the situation comes to this: The legislature has delegated to the Commission the duty of fixing rates, which it does in aid of legislative action, or as an auxiliary to the exercise of the legislative functions. This the authorities all sanction as falling within the legislative power. There can exist no valid objection to conferring such authority upon an administrative board. The board thereafter administers the law as devised. Certainly such a regulation does not clothe an officer or officers in one department with official duties appertaining to those of another. Nor does it commingle the appropriate functions of the several departments of government.

I conclude, therefore, that the first objection urged against the constitutionality of the act is not maintainable.

The next objection urged to the act is that it is an encroachment upon the constitutional authority of Congress, in that, in practical operation, it interferes with interstate commerce. It is one thing to determine whether the act itself attempts to regulate interstate commerce, and another to determine whether in its practical operation it is effective to that end. I assume that if an affirmative answer is given to either of these questions, the law cannot stand. Congress is accorded, under the Federal Constitution, power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." §8 Art. I.

By the 9th article of amendment to the Constitution it is declared that:

"The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people."

111 And by the 10th article:

"The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Thus is indicated, as strongly as could be, that the constitution of the United States is but a delegation of powers, which powers, together with the implied powers that attend those that are expressnecessary to a practical and efficient exercise thereof, constitute all that the General Government has, or can presume to exercise. All other powers are reserved to the states, and to the people thereof—primarily to the people, as they are the repository of all power, political and civil. The whole law-making power out of this repository of power is committed to the several state legislatures, except such as has been delegated to the Federal Government or is withheld by

express or implied reservation in the state constitutions. Says Danio, Chief Justice, in People v. Draper, 15 N. Y. 532, 543:

"Plenary power in the legislature, for all purposes of civil government, is the rule. A prohibition to exercise a particular power is an exception. In inquiring, therefore, whether a given statute is constitutional, it is for those who question its validity to show that it is forbidden. I do not mean that the power must be expressly inhibited, for there are but few positive restraints upon the legislative power contained in the instrument. The first article lays down the ancient limitations which have always been considered essential in a constitutional government, whether monarchial or popular; and there are scattered through the instrument a few other provisions in restraint of legislative authority. But the affirmative prescriptions and the general arrangements of the constitution are far more fruitful of restraints upon the legislature. Every positive direction contains an implication against anything contrary to it, or which would frustrate or disappoint the purpose of that provision. The frame of the government, the grant of legislative power itself, the organization of the executive authority, the erection of the principal courts of justice, create implied limitations upon the law-making authority as strong as though a negative was expressed in each instance; but independently of these restraints, express or implied, every subject within the scope of civil government is liable to be dealt with by the legislature."

112 So says Redfield, Chief Justice, in Thorpe v. Rutland & Burlington Railroad Co., 27 Vt. 140, 142:

"It has never been questioned, so far as I know, that the American legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restrained by written constitutions. That must be conceded, I think, to be a fundamental principle in the political organizations of the American States. We cannot well comprehend how, upon principle, it should be otherwise. The people must, of course, possess all legislative power originally. They have committed this in the most general and unlimited manner to the several State legislatures, saving only such restrictions as are imposed by the Constitution of the United States, or of the particular State in question."

So it is that the National Constitution is wholly a delegation of power, and the State Constitution a restriction or limitation of power, and the State legislatures may exercise all the reserved powers, save those which the people have withheld. It follows, very naturally and logically, from these premises, that the National Government is without power and authority to legislate or to supervise or control in any manner the movement of commerce which is entirely within a state, or that which is appropriately termed intrastate as distinguished from interstate commerce. This arises simply from the want of power, the lack of delegation of power to legislate touching that class of commerce. Upon the other hand, the sole power for the regulation of intrastate commerce rests with the State legislatures. Congress has expressly recognized this distinction of powers in the passage of the act to regulate commerce

of February 4, 1887. 1 Sup. R. S. p. 529. The act declares that the provisions thereof "shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State."

113 So it has been pertinently observed by Mr. Justice Harlan, in Interstate Commerce Commission v. Brimson, supra, to the same effect.

The express purpose of the Railroad Commission Act is to regulate transportation and commerce, and common carriers thereof, within the state. This is apparent both from the title of the act and from the provisions thereof. The title runs, "To regulate transportation and commerce, and common carriers thereof in this State, and, for that purpose, to create a Railroad Commission of Oregon," etc. By the 11th section the term "railroad" is defined to embrace all corporations that now, or may hereafter, operate, manage, or control "any railroad or interurban railroad * * * as a common carrier in this State." And it is further declared that, "The provisions of this Act shall apply to the transportation of passengers and property * * * and to all charges connected therewith; and shall apply to all railroad companies," etc., "that shall do business as common carriers upon or over any line of railroad within this State." By section 13 it is required that every railroad shall file with the commission schedules showing all rates, fares and charges for the transportation of passengers and property, "which it has established and which are in force at the time between all points in this State upon its line." By section 18, that "whenever passengers or property are transported over two or more connecting lines of railroad between points in this State," the joint rates of charge therefor shall be reasonable and just. These general provisions indicate an undoubted purpose to limit the scope of the exercise of the commission's powers within the State. But by section 47 it is made the duty of

114 the commission to investigate freight rates on interstate traffic on railroads in the State, and when, in the opinion of such commission, the rates are excessive or discriminatory, to present the facts thereof to the offending railroad company, and if without avail, then to apply to the Interstate Commerce Commission for relief. From this one provision of the act, if from none other, the deduction is absolute that there was no intention on the part of the legislature of the state to enter the domain of interstate regulation of railroad traffic. The commission is a state commission, designed to render state service, and no intendment should be deduced that it is empowered to execute a broader or an unlawful service, unless the language is explicit, unmistakably leading to such conclusion. No such language is found in the act, and upon its face it is not inimical to the commerce clause of the National Constitution.

The order of the commission enjoining upon the complainant the adoption of the classification therein prescribed is not so specific, but the purpose is reasonably deducible. The mandate of the order is that complainant "shall cease and desist from charging any higher rates within this State for the transportation of merchandise and other commodities between the City of Portland and points on the

defendant's main, branch, leased or otherwise controlled railroad lines within the State of Oregon, covered by the class rates in said tariff No. L-525, O. R. C. No. 39, I. C. C. No. 1146, than the class rates prescribed in this order." Then follows the basis of the rates prescribed, or rather the formula by which they may be readily ascertained. The order therefore, can be effective only
115 within the State of Oregon. In this there is no ambiguity. That the Western classification was taken upon which to base the formula for ascertaining the rates ordered to be substituted cannot change the purpose of the order. The result would have been the same if the commission had fixed the same rates without using tariff L-525 as a basis for its formula. The order is not specific, however, in this, that it does not, in direct terms, say that the rates so fixed shall apply to the transportation of intrastate commerce only; but, considering that the commission is a state organism, endued with authority to fix rates within the state and not beyond its confines, it is but a legitimate deduction that its purpose in promulgating the order was to prescribe rates effective as relating to intrastate, and not interstate, commerce. Presumptions are always in favor of the lawful exercise of a power—not that it was unlawfully exercised, or that a functionary has exceeded the authority delegated or bestowed. So that, as matter of law, neither in the intendment of the act, nor in the draft of the order, has there been an invasion of the right and power of Congress to regulate commerce between the states.

I regret that the State court has not first construed this statute, as its judgment would constitute a rule of action for the Federal courts. But in the absence of such construction, the duty is devolved upon this court.

The next inquiry is, Has there been such an invasion by the practical operation of the act, under the order of the commission, if effective?

At the time the order complained of was made by the State Railroad Commission, U. P. Tariff No. 1578, with supple-
116 ments, was in force and effect, having been duly filed with the Interstate Commerce Commission. Briefly, this tariff covers transportation between Missouri River and common points to various stations on the O. R. & N. lines in Oregon east of The Dalles, other than the station of Pendleton. So also was in force and effect Transcontinental Terminal Tariff No. 4-C, covering transportation between Mississippi and Missouri River common points and certain North Coast terminals, including Portland, Oregon. Tariff L-525, with supplements thereto, which is known as the Western Classification, was likewise in force and effect, and fixes the class and commodity rates between Portland and all points in Oregon, Washington and Idaho on the line of the complainant's railroad. Another tariff, designated O. R. & N., I. C. C. No. 967, which is joint between the San Francisco & Portland Steamship Company and the complainant, covers transportation between San Francisco and points and places on complainant's lines in Oregon east of The Dalles. And still another joint between the Southern Pacific lines and the complain-

ant's, covering transportation between points in California and Portland, Oregon, and all points in Oregon east of The Dalles. This is designated S. P. I. C. C. No. 2130.

It is further made to appear by the bill that the through rates from California, both by way of the San Francisco & Portland Steamship Company's line and that of the Southern Pacific, to points east of The Dalles, consist mainly of a combination of the rates fixed by tariff No. L-525 from Portland to such points east of The Dalles and certain arbitraries or local rates. The arbitraries are not given, nor the basis upon which they are estimated or ascertained.

Where, also, the rates by tariff U. P. No. 1578 are higher for
117 transportation from points of shipment from Missouri River common points to points in Oregon east of The Dalles on complainant's lines than the combined rates from such Missouri river common points to Portland, under said tariff No. 1578, and the rates from Portland out under tariff No. L-525, the regulations require that the shipments shall take the combined rates.

As to class rates, the combination is generally somewhat lower than the through rate from Missouri River common points to points in Oregon east of The Dalles; but as to commodity rates, the combination is somewhat higher. If, however, the rates sought to be established by the State Railroad Commission be put in force, the combination rates on commodities will be less than the through rates from Missouri River common points to points on complainant's lines east of The Dalles. This is designed to indicate how the established rates for interstate transportation will be disturbed and affected by an adoption of the proposed state rates. In further demonstration of the situation, it is alleged that at least seventy per cent of the freight carried from Portland to points east of The Dalles, under the class rates established under Western Classification No. L-525, originates at points along or east of the Missouri River or in California, and is transported from said eastern points and California to Portland and thence to points east of The Dalles, while large quantities of freight are transported directly from eastern and California points to points east of The Dalles in Oregon under the through rate.

It seems to be premised by counsel for complainant that the commission's order does not relate to purely internal commerce
118 originating within the State of Oregon, or such commerce as may be appropriately designated intrastate commerce. If this premise be admitted, it must be at once conceded that the State Commission has attempted to act beyond the scope of its authority. Counsel's premise is at fault, however. As has been previously shown, the commission presumptively has acted within the scope of its authority, which was to prescribe rates applicable to the transportation of intrastate commerce only. But beyond this, it seems to be thought that if a state tariff affects an interstate tariff in the slightest measure, though incidentally, it must give way to the latter, and hence is void and inoperative. For instance, it is alleged that, if the State Commission's rate becomes effective, many persons will ship their commerce from without the state to

Portland, and then reship to points east of The Dalles; or, in another way, wool will be shipped to Portland from points east of The Dalles, and thence East by the transcontinental rates; and thus the complainant will be compelled to re-establish its rates in order to retain its through haul from Eastern Oregon points. In other words, interstate traffic will thereby be interfered with, disturbed, and disarranged.

It is, and always will be, a difficult question to determine as to when and what commerce should be classified as interstate, and when and what should be classified as intrastate. The question depends largely upon the facts and circumstances attending each case as it arises. There can be no doubt that commerce originating within the state and carried to some other point within the state is intrastate commerce. So it is of commerce originating
119 within the state and transported, by continuous carriage, from within to some point without the state, or originating without the state and carried within—that is to be classified as interstate commerce. But when intrastate becomes interstate commerce, and vice versa, is an inquiry involving nice distinctions, perhaps. But we are not concerned with that at the present time. We are dealing with the distinct question of the supposed conflict between the regulation of interstate and intrastate commerce. Let us take a commodity, for instance, manufactured in Portland. Let it be agricultural implements. The state has a perfect and undoubted right to regulate the tariff for transportation of such commodity by rail to any part of the state from Portland, so that the tariff be reasonable; and I may say to any point on complainant's lines, within the state, east of The Dalles. If that regulation interferes with present tariffs for interstate transportation of the same commodity from common points east of the Mississippi or Missouri River to points on complainant's lines east of The Dalles, who can say Nay? But to go a step farther: The same commodity may be shipped to Portland from without the state, and put in common stock. When the commodity thus comes to rest in the state, and is sold by the dealer for transportation from Portland to some other point within the state, it is as much intrastate commerce as the case just put, and the state may, with equal authority, regulate the freight tariff. This is a condition of which complaint is made lest it be that dealers will take advantage of the local rate, and, selling to customers within the state, ship first to Portland at the transcontinental rate, and thence out to the
120 interior at the local rate. A shipment from the East, via Portland, to a point within the interior of the state, would be interstate commerce; but whether such a shipment could be made to take the classification of interstate commerce by shipment to Portland in the name of the dealer, and then of intrastate classification by the dealer billing it out of Portland again to his patron in the interior, is another question, which we need not decide. It remains clear that whenever the commodity partakes of the characteristic of intrastate commerce, the state has the right to fix the rates of tariff for its transportation wholly within the state. Take

the case of wool again, purchased in Eastern Oregon. If that be shipped to a buyer in Portland, why is it not intrastate commerce? That same wool, after being thus shipped to Portland, if it be that such buyer subsequently sells to a buyer in Boston and ships to him at that place, would become interstate commerce. If bought in Eastern Oregon for transportation to Boston by way of Portland, the local state rate could not apply, because that would partake of the character of interstate commerce.

The Baker City situation is relied upon as a demonstration that the local or state rates, if approved, will unsettle interstate regulation, or rather will disturb the situation as it now stands. That city is engaged in a jobbing business, and is importing merchandise from points east of the Missouri River and in California, which it sells to customers within a certain radius of territory in job lots. Under tariff U. P. I. C. C. No. 1578 and No. I.-525, the Baker City
121 jobbers pay a freight rate from point of origin in the East or in California generally equal to the carload rate to Portland plus the carload rate from Portland to Baker City, and are required to pay the less than carload rate from Baker City to points of distribution. Now, the Portland jobber is required to pay the carload rate from point of origin in the East and in California to Portland and the less than carload rate from Portland to point of distribution. So it is, says the complainant, that the profit of the Baker City jobber and his ability to sell merchandise depend upon the difference between the carload rate out of Portland and the less than carload rate from Portland to the point of distribution. It is further claimed that the rates established by the commission's order in comparison with those fixed by I.-525 greatly decrease the difference between the carload rates and the less than carload rates from Portland, "so that interstate traffic originating in the East and in California, and so in the past distributed from Portland and from Baker City, respectively, can only be distributed advantageously, and with profit, from Portland to all points in Eastern Oregon," and, therefore, that the commission's order attempts to regulate the movement of, as well as the rate charged upon interstate commerce. This is only an illustration of how rate-making may destroy and build up jobbing centers, considering the facts stated to be true, and the deduction legitimate. But transportation companies do not have, nor can they longer claim, a monopoly upon rate-making. Suppose, however, Portland was able to supply from home production all the different kinds of merchandise that the Baker City jobber wanted in his trade. A reasonable freight rate made by the state for the transportation of the merchandise to Baker City and interior points
122 would be perfectly legitimate. If that rate enabled Portland, through its home produced merchandise to displace the business of the jobber in Baker City dealing in like merchandise imported from other states, how could it be said that the state freight tariff was unconstitutional, and therefore unlawful? The state rate does not apply to interstate commerce; nor was it designed so to apply. But if the Portland merchant imports his goods and then jobs them from Portland, the result will be the same as if he were dealing in home

products, because the importations will have become domesticated. If that method of dealing constitutes or induces a change in the movement of interstate commerce, it is the thing that the merchant will or will not do as his profits in business may impel him. The movement of his merchandise when it goes out of Portland to the interior of the state is intrastate. I am not speaking now of goods imported to Portland in original packages, and then shipped out to points in the interior of the state in like packages as shipped to Portland, because I am not now called upon to determine whether such character of movement would constitute interstate traffic. It will be time enough to decide such case when it arises. I have reference to such merchandise as may be first imported to Portland, and then, going into a wholesale dealer's common stock, is wholesaled or jobbed out to customers in the interior of the state—such a movement of merchandise from Portland to the interior of the state as would constitute intrastate shipment pure and simple. If this kind of traffic, with the freight rate imposed upon it by the state, is of such proportions and such percentage as to affect trade in interstate merchandise, and therefore render it advantageous to interstate lines to change their rates so as to control the trade in certain
123 channels, that is not a trenching upon the exclusive authority of congress to regulate interstate commerce. The interference is but incidental, and flows from a perfectly legitimate regulation of freight rates by the state, and an altogether natural movement of trade; and the condition is absolutely beyond the control of Congress. That I may be fully understood, I will allude to another incident. Counsel for complainant says:

"If the Northern Pacific Railway should receive at Tacoma freight destined to a point in the State of Oregon east of The Dalles, such merchandise would be moved from Portland to the points east of The Dalles over the lines of the complainant, and the rates charged therefor would be the class rates fixed by Tariff No. L-525 filed with the Interstate Commerce Commission as required by the Interstate Commerce Act. By the order sought to be set aside the complainant would be required to charge not the rates fixed by Tariff L-525 but the rates established by the order of the commission."

In this statement counsel is mistaken. The shipment would constitute an interstate shipment, and L-525 would prevail as against the state rate. So, if it be that the local state rates, as fixed and regulated by the State Railroad commission on these commodities, unsettle in some way previously fixed transcontinental or interstate rates, that circumstance does not render the state rates invalid as an interference with interstate commerce. Let it be supposed that the state was the precursor in making rates for the transportation of purely intrastate commerce, there could then, at that juncture, be no conflict. Could it be contended that the state rate was invalid because connecting railroads might desire to establish a transcontinental rate in combination with a local rate, also of their own making, which would conflict with the state rate? If so, the fixing of a state rate would be a precarious and evanescent thing, to be dissipated

at the caprice of the transportation companies, and the
124 General Government would usurp, in practical effect, the functions of the State Government in the regulation of intrastate commerce. Such was not the purpose of the framers of the Federal Constitution. Nor was it the purpose of Congress itself in the adoption of the Interstate Commerce Act, wherein was recognized, as has been noted before, the right of the state to regulate commerce wholly within its borders. The bill, therefore, in my opinion, states nothing that renders either the State Railroad Commission Act or the order of the commission in conflict with the Commerce clause of the Federal Constitution. This conclusion is borne out by the decisions of the Supreme Court. In Wabash, St. Louis & Pacific Railway Co. v. Illinois, 118 U. S. 557, the court says:

For instance, a contract might be made to carry goods for a certain price from Cairo to Chicago, or from Chicago to Alton. The charges for these might be within the competency of the Iillinois Legislature to regulate. The reason for this is that both the charge and the actual transportation in such cases are exclusively confined to the limits of the territory of the State, and is not commerce among the states, or interstate commerce, but is exclusively commerce within the state. So far, therefore, as this class of transportation, as an element of commerce, is affected by the statute under consideration, it is not subject to the constitutional provision concerning commerce among the States. It has often been held in this court, and there can be no doubt about it, that there is a commerce wholly within the State which is not subject to the constitutional provision, and the distinction between commerce among the states and the other class of commerce between the citizens of a single State, and conducted within its limits exclusively, is one which has been fully recognized in this court, although it may not be always easy, where the lines of these classes approach each other, to distinguish between the one and the other."

So in Smyth v. Ames, 169 U. S. 466, the court says:

"It cannot be doubted that the making of rates for transportation by railroad companies along public highways, between points wholly within the limits of a State, is a subject primarily within the control of that State."

The case of Gulf, Colorado & Santa Fe Railway Company v. Texas, 204 U. S. 403, is highly instructive, and is indicative of how the Supreme Court maintains the prerogative of the
125 State Government to regulate commerce within its borders. In this case a quantity of corn had been puurchased in Hudson, South Dakota, for delivery at Goldthwaite, Texas. However, in course of the dealings between the parties concerned, the corn was billed to Texarkana, Texas. It remained in that place some five or six days, and was reconsigned from Texarkana to Goldthwaite, Texas. The court says:

"The single question in the case is whether, as between Texarkana and Goldthwaite, this was an interstate shipment."

And it was determined that it was not. The shipment was, therefore, as between the points named intrastate, and subject to State

regulations. There previously existed a through interstate rate from Hudson, S. D., to Goldthwaite, Texas, but this did not deter the court from adjudging the carriage, under the circumstances recited, to be of intrastate commerce. See also The Daniel Ball, 10 Wall, 557, 565; Sands v. Manistee River Improvement Co., 123 U. S. 288, 295; and General Oil Co. v Crain, 209 U. S. 211. This last case is further instructive as to when an interstate shipment ceases to be interstate commerce.

These authorities I deem to be decisive of the controversy. Nor does the case of Louisville & Nashville Railroad Co. v Eubank, 184 U. S. 27, hold to a different view. It is rather illustrative of the same principle. The railroad had established a rate for transportation of tobacco from Nashville, Tenn., to Louisville, Ky., at 12 cents per 100 pounds. The rate was so fixed, presumably, on account of water competition between the same points. It had also established a rate from Franklin, Ky., to Louisville, of 25 cents per 100 pounds. The road from Nashville to Louisville ran through
126 Franklin. Eubank shipped large quantities of tobacco from Franklin to Louisville, and paid the established rate, but subsequently sued the railroad company to recover back the excess between 12 cents and 25 cents per 100 pounds. This is the case that came to the Supreme Court. The theory upon which the suit was instituted was that the alleged overcharge was unlawful because the State of Kentucky, by its constitution, had declared it so to charge more for a shorter than for a longer haul over the same line, under substantially similar circumstances and conditions. The circuit Court of the state, from the judgment of which error was prosecuted to the Supreme Court, held, construing this constitution, that it applied as well to carriage from without the state to points within. Thus construed, the Supreme Court held that the effect of the clause in question in the Kentucky Constitution was to regulate interstate commerce, and hence the judgment of the Kentucky court was reversed. In deciding the case, the court says:

"The vice of the provision lies in the regulation of the rates between points wholly within the State, by the rates which obtain between points outside of and those which are within the State. * * * But the fact which vitiates the provision is that it compels the carrier to regulate, adjust or fix his interstate rates with some reference at least to his rates within the State, thus enabling the State by constitutional provision or by legislation to directly affect, and in that way to regulate, to some extent the interstate commerce of the carrier, which power of regulation the Constitution of the United States gives to the Federal Congress."

Elsewhere the court says:

"We fully recognize the rule that the effect of a state constitutional provision or of any state legislation upon interstate commerce must be direct and not merely incidental and unimportant; but it seems to us that where the necessary result of enforcing the provision may be to limit or prohibit the transportation of articles from without the State to a point within it, or from a point within to a point without the State, interstate commerce is thereby affected, and may be

thereby to a certain extent directly regulated, and in that event the effect of the provision is direct and important and not a mere incident."

127 It should be noted that this same clause in the Kentucky constitution had been previously held by the Supreme Court of the United States (Louisville & Nashville Railroad Company v. Kentucky, 183 U. S. 503), as applied to places all of which are wholly within the state, to violate no provision of the Federal Constitution, and it was only because an inferior court of Kentucky had put the construction upon the Kentucky Constitution as above indicated, that the clause was here held to be inimical to the commerce clause of the Federal Constitution.

Neither does the case of Hall v. DeCuir, 95 U. S. 485, militate against the principle here applicable. The controversy there was concerning a statute of the State of Louisiana which required common carriers of passengers to extend to all persons, without regard to race or color, equal accommodations, rights and privileges, and the decision of the court proceeded upon the hypothesis that the statute necessarily and directly affected interstate traffic. Mr. Chief Justice Waite says:

"But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without or goes out from within."

The cases of Swift & Co. v. United States, 196 U. S. 375, and Loewe v. Lawlor, 208 U. S. 274, are concerning unlawful combinations in restraint of trade, which affected not only trade relation within a single state, but such relations also between the states; hence lack applicability here.

Let us now proceed to the question whether the penalties imposed by the act are of such a nature as practically to deprive the

128 complainant of the equal protection of the law. A way for ascertaining whether the rates fixed by the railroad Commission are reasonable, by judicial determination, is afforded the carrier by the provisions of the act. The complainant complains, however, that to avail itself of such provisions it must either obey the order of the Railroad Commission pending legislation, or resort to the court for an injunction suspending or staying the order in the meanwhile; but that, if resort be had to the injunction, the act requires the giving of a bond incurring such heavy liabilities in case of failure to sustain the contention that no company could well afford the experiment. The conditions of the bond required are, that the company shall answer for all damages caused by the delay in the enforcement of the order of the commission, for all penalties that would attach against the company, and for all compensation for whatsoever sums for transportation services any person or corporation shall be compelled to pay in excess of the sum such persons

or corporation would have been compelled to pay if the order of the commission had not been suspended. Here are three conditions. The last of the three we must dismiss at once as being perfectly reasonable and just, for if the order of the commission was reasonable, and so adjudged to be by the court, it should be obeyed from the first.

As to the first condition, touching what damages would ensue by reason of delay in enforcing the order, none have been suggested that would be at all burdensome, nor do I now think of any of that character.

The second condition, at first blush, would seem onerous, and a drastic thing to require of a litigant. But what are the penalties that would attach against the railroad so circumstanced? By the
129 51st section of the act, if any railroad company shall omit to do any act, matter, or thing required to be done by it, such railroad is rendered liable to the person, firm, or corporation injured thereby in treble the amount of damages sustained in consequence of such violation, together with reasonable attorney's fees. These damages may partake of the nature of a penalty. But what damages would ensue to any person, corporation, or the state for a refusal to obey an order fixing rates? It might be said that a shipper was damaged by the difference between the rates established by the commission and those charged by the company; but that item is expressly provided for by the third condition, which, by implication, excludes it from the operation of the second. There may be in some way damage to somebody attending the failure of the railroad company to obey the order of the commission and to adopt certain rates, but, whatever it may be, it cannot be large or oppressive, even if trebled.

Now, what other penalties are provided? By section 52 it is declared that if any officer, agent, or employee shall fail or refuse to do any of the following things, he shall be deemed guilty of an offense, and be subject to a fine of from $100 to $1,000; and a penalty of from $500 to $1,000 is recoverable from the railroad company for each such offense when the officer, agent, or employee acts in obedience to its direction. These are the things enumerated: Shall refuse to fill out and return any blanks required by the act, or refuse to answer any questions therein propounded, or shall give false answers to any such questions, or shall, upon proper demand, refuse to exhibit any book, paper, account, etc., in his possession or
130 under his control. It is plain that none of these things are covered by the second condition of the bond.

The 53rd section provides that if the railroad shall violate any provision of the act, or shall fail or refuse to obey any lawful requirement of the commission or judgment or decree of the court, for every such offense such railroad shall forfeit to the state from $100 to $10,000.

It is probable that the penalties here provided for would not be covered by the bond, because the injunction is provided by law. The company would be availing itself of a lawful right, and, while so doing, it would seem that it could not at the same time be held

for a violation of section 53 by a refusal to obey an order of the commission or a judgment or decree of the court. But however this may be, the penalty condition of the bond has been eliminated by an amendment of section 33, adopted February 23, 1909. See Session Laws 1909, p. 163. So that the bond exacted can be no impediment of substantial moment standing in the way of the complainant obtaining a speedy and complete adjudication touching the reasonableness of the rates fixed by the commission.

But the railroad company is entitled to sue for relief against any unlawful order of the Railroad Commission in any court, State or Federal, having jurisdiction, and it is said the penalties imposed by section 53 are so enormous as to deter the company from seeking relief in any court but that named in the act, and in the way prescribed. From a reading of the section, it will be seen that it is the railroad only that is amenable to the penalty prescribed, not its officers, agents, or employees. These functionaries of the railroad are made the representatives thereof for the purpose of fixing responsibility upon the railroads, so that in a case like the
131 present the railroad would be chargeable with a violation of the act in failing to obey the order of the Railroad Commission requiring the revision of local rates within the State — one offense, not a repetition of offenses from day to day or at intervals as long as the railroad continued in the refusal to obey the order. It would seem that such is the reasonable construction of the section. Being penal, it should receive a strict construction, and no accumulation of offenses should be carved out of it unless they are created by the strict letter of the law.

Section 52, as I have shown, penalizes special acts only, which are enumerated in the section, none of which are involved by this controversy. Section 51 relates to the recovery of damages in treble the amount of loss suffered, but the railroad company is not penalized except by the provisions of sections 52 and 53, and this latter section does not affect its agents and employés.

Now, it is urged that the case of Ex Parte Young, 209 U. S. 123, is decisive of the particular point here presented. The statutes under consideration in that case, however, were most severe and drastic. For a violation of the act, if by a natural person, a fine of from $2500 to $5000 was imposed for the first offense, and double that for each subsequent offense; and a like fine was imposed if the carrier was a corporation. Another section of the act fixed passenger rates at two cents per mile, and provided that any railroad company, or any officer or representative thereof, violating any of the provisions of the act should be guilty of a felony, and subject to a fine not exceeding $5000, or imprisonment in the state prison not exceeding five years, or both. Another section
132 provided for the regulation of freight traffic, and made any violation of such regulation a misdemeanor, punishable by imprisonment in the county jail. It will be seen at once that there is no comparison between the penalties imposed by the Oregon statute and that of Minnesota, and the difference is so wide as to render the Young case not authoritative here.

Nor do I think that the penalties imposed are exorbitant or burdensome for wilful violations of the provisions of the act. They were designed to secure an enforcement of the law, and I discover no intendment to prevent the railroad companies concerned having ample recourse to any court having jurisdiction for relief.

The third of the Federal questions urged, namely, that the effect of the commission's order will be to deprive the complainant of its property without due process of law, is consequential only depending upon the result of the other questions presented. If, having found against complainant's contention as to the questions discussed, it further appears that the rates established by the commission are not unreasonable, then there can be no taking of the complainant's property without due process of law.

This brings us to the ultimate question whether, under the allegations of the bill, it appears that the rates imposed by the Railroad Commission are unreasonable and unjust to the complainant company. There is a statement in paragraph 20 of the bill which is very significant. The allegation referred to is as follows:

"While the immediate effect of such order, 'Exhibit I,' if it could be confined strictly to the State of Oregon, might leave your orator a fair income upon its entire business, nevertheless, if the
133 rates attempted to be established by the said order, 'Exhibit I,' be applied to the interstate business directly affected thereby, and if the percentage of reduction effected by such order be applied to the local business of your orator in the States of Oregon, Washington and Idaho, which local business is now being transacted upon rates higher than those fixed by tariff L-525, it would operate to confiscate the property of your orator and deprive it of property without due process of law in violation of the Constitution of the United States, because such reductions would leave your orator without any fair net earnings upon its property."

This signalizes the particular theory upon which this suit is instituted. But the order has or can have no effect beyond the limits of the State of Oregon. It was not so designed, nor is such its operative force except as it may affect interstate commerce incidentally merely. It is no purpose of the Railroad Commission Act, nor of the order of the commission, that the rate fixed by the commission should be applied to interstate business, or any or parcel thereof, nor to the business of complainant in Washington or Idaho, or elsewhere than in Oregon. That it may operate to affect incidentally interstate rates established, or the rates on complainant's lines in Washington and Idaho, is, as I have endeavored to show heretofore, not to the purpose. The question is, Are the rates established by the commission in Oregon and for Oregon, and not beyond its confines, reasonable? That they are is practically admitted by the averment quoted, that the effect of the order, if confined to the state, might leave a fair income upon complainant's entire business. In other words, the pleader is not willing to negative the fact of reasonableness that attends the order by legal presumption. Tested by the demurrer, the averment is to be construed most strongly against the pleader.

By paragraph 25 of the complaint it is averred that the rates fixed between Portland and The Dalles by L-525 are unreasonably low; that all the rates attempted to be established by the
134 commission's order to points east of The Dalles are based upon the rates charged by L-525 between Portland and The Dalles, and the rate of increase in the rates to points east of The Dalles as fixed by the commission's order is unreasonably low, and has the effect of making the rates to points east of The Dalles unreasonably low, and unjust to complainant.

This is merely argumentative, and sets forth no facts from which it might be deduced that the rates fixed by the commission were even unremunerative to the company.

So of the further averments of the bill, as they pertain to the application of the commission's rates to the branch lines of the complainant. "It is a fact," says the pleader, "that such attempted adjustment of rates is arbitrary and unreasonable, and is founded upon no circumstance and condition affecting the cost of service to your orator or the value of the service to the public, and is unjust to your orator."

But the fault with the bill is that no facts are stated as to the cost of the service, or in any way indicating what it is worth to transport freight over the lines of the complainant between the points designated, and the court is, therefore, unable to say from the bill that the rate fixed by the commission is unreasonably low. Especially are these and similar averments insufficient when read in view of the particular theory upon which the suit is instituted.

Based upon the foregoing considerations, the demurrer to the bill should be sustained, and the preliminary restraining order should, consequently, be dissolved.

135 It is proper to say further, however, that I have carefully examined the affidavits and showing made for a continuance of the injunction, and I am of the firm opinion that the proofs are wholly insufficient to overcome the prima facie case that attends the order of the commission, supported by the ample showing of the defendants.

Opinion. Filed Sept. 28. 1909. G. H. Marsh, Clerk. By J. W. Marsh, Deputy.

136 And Afterwards, to wit, on the 18th day of November, 1909, there was duly filed in said Court, an amendment to the bill of complaint, in words and figures as follows, to wit:

137 In the Circuit Court of the United States for the District of Oregon.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

Amendment to Bill of Complaint.

To the Honorable the Judges of the United States for the District of Oregon:

Your orator, the Oregon Railroad & Navigation Company, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said state, by leave of the court, in that behalf first had and obtained, brings this its amended bill of complaint against Thomas K. Campbell, Clyde B. Aitchison, Oswald West and A. M. Crawford, each of whom is a citizen and resident of the State of Oregon, and residing within the district of Oregon and within the jurisdiction of this court, and thereupon your orator shows and avers:

I.

Heretofore, to-wit, on the 11th day of May, 1908, your orator duly made and filed its original bill in this suit against the said Thomas K. Campbell, Clyde B. Aitchison, Oswald West and A. M. Crawford, to which said original bill this is an amendment, and to which said bill your orator begs leave to refer, and your orator hereby repeats all and singular the allegations and averments in said original bill contained and set forth, and prays that this amendment may be held and taken as part of the said original complaint in the same
138 manner as if the allegations herein contained were filed and at large set forth as part of said original bill.

II.

Your orator further shows with reference to and in connection with the allegations contained in the fifteenth paragraph of said original bill that of the freight carried, and which will hereafter be carried, from Portland to points on your orator's lines in Oregon east of The Dalles under the class rates established and fixed by tariff Number L525, at least forty per cent. thereof originates out of the State of Oregon, has been, is and will be shipped from Portland to points on your orator's lines east of The Dalles in the same packages in which it was originally shipped from the point of origin outside of the State of Oregon to Portland, and without coming to rest within the State of Oregon and without becoming part of the traffic of the State of Oregon, and at least twenty per cent. of the freight carried, and which will hereafter be carried, from Portland on your orator's lines in Oregon east of The Dalles under the class rates established and fixed by tariff Number L525 is, has been

and will be shipped from Portland to points on your orator's lines in Oregon east of The Dalles by carriers and persons bringing the same to Portland from points without the State of Oregon with the intention of immediately and without delay shipping the same over the lines of your orator from Portland to points in Oregon east of The Dalles, and that the same has been, is and will be so brought into the State of Oregon, and so immediately shipped over the lines of your orator from Portland to points in Oregon east of The Dalles, and that the class rates undertaken to *the* established by the said pretended order of the said Railroad Commission of Oregon by its terms applies to all of the freight mentioned in this amend-
139 ment, and that your orator in and by the said pretended order is required to cease and desist from charging upon said freight mentioned in this amendment for the transportation thereof between the city of Portland and points on your orator's lines in the State of Oregon east of The Dalles the class rates fixed and established by said tariff Number 1525, and in lieu of said class rates established by said tariff Number 1525 which, your orator in and by the terms of the said pretended order is directed and required to charge the rates fixed in and by said order.

III.

Your orator further avers that in and by section XII of the said act of the State of Oregon mentioned in the third paragraph of the original bill herein referred to as the railroad commission act, it is provided that the charges made by any common carrier subject to the act for any service rendered in the transportation of property, or in connection therewith, shall be reasonable and just, and that the said provision of the railroad commission act is the only limitation fixed and established by the State of Oregon, or by any legislation thereof, upon the right of your orator to make charges for the service performed by it as a common carrier. Your orator, as the owner and operator of the railroads owned by it, and the franchises, equipment and appurtenances connected with such railroads, is entitled to the possession, management and beneficial use thereof, and is authorized to establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by Section XXX of the said railroad commission act, the said Railroad Commission is undertaken to be authorized and empowered, after an investigation made under the provisions of the act to determine and by order fix a reasonable rate to be imposed, observed and followed in the future in lieu of any rate found to be unrea-
140 sonable, and to cause a certified copy of such order to be delivered to an officer or station agent of the railroad affected thereby, which order shall take effect and become operative within twenty days after service thereof, and by section XLVIII of said railroad commission act, it is provided that if any railroad agent or officer thereof shall charge, demand, collect or receive from any person for any service rendered in the transportation of property—than that established by any order of the Commission, such railroad

shall be deemed guilty of an unjust discrimination, and upon conviction thereof shall forfeit and pay into the State treasury not less than one hundred dollars nor more than ten thousand dollars for each offense, and any agent or officer so offending shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each such offense. By section XXXI of said railroad commission act all the rates fixed by the Commission shall be in force and continue in force until found otherwise in an action brought for that purpose pursuant to sections XXXII, XXXIII, XXXIV, and XXXV of said act, reference to all of which sections is hereby made, and your orator prays that the same may be considered and taken as part of this amended bill; that in any by section XXXII of said act any railroad company affected by any order of the Commission may commence a suit in the circuit court of Marion County against the Railroad Commission, as defendant, to vacate and set aside any such order; that in and by said section the Railroad Commission is given ten days in which to serve and file its answer to said complaint, and thereupon said suit is at issue and stands ready for trial upon ten days' notice by either party. In all trials under said section XXXII it is provided that the burden of proof shall be upon the plaintiff to show by clear and satis-
141 factory evidence that the order of the Commission complained of is unlawful or unreasonable, as the case may be. Your orator avers that the rates fixed and established by said tariff L525 for the transportation of freight from Portland to points in Oregon east of The Dalles are, have been and will be for a period of more than three years hence low, just and reasonable rates for the service performed in the transportation of the commodities affected thereby between said places and each of them, and that the rates undertaken to be prescribed by the Railroad Commission of Oregon in and by said pretended order are, have been, and each of them is and will be for more than three years hence unjust and unreasonable for the service performed in the transportation of freight now carried under the class rates established and fixed by tariff Number L525 from Portland to points in Oregon east of The Dalles. Your orator avers that by Article XIV of the amendment to the Constitution of the United States, your orator has a right to a judicial investigation in a court by due process of law under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy of the question as to the reasonableness of the said rates so fixed and established by your orator, and the question as to the reasonableness of said rates so attempted to be fixed and established by said Commission as aforesaid, and of each of said questions. In and by Section 1 of Article VII of the Constitution of the State of Oregon all of the judicial power of the state is vested in a circuit court and county courts; that the Railroad Commission of Oregon is not one of said courts, and cannot and does not exercise any of the judicial powers exercised by a court or conduct any judicial investigation.

The attempt of the said Commission in and by said order sought to be set aside herein to set aside and annul the rates
142 established by your orator, and the establishment of the rates undertaken to be prescribed by said order of the Commission against the will of your orator is pro tanto the taking of the property of your orator and depriving your orator thereof without due process of law in violation of Article XIV of the amendment to the Constitution of the United States, and the making of said pretended order of the Commission herein set out was pro tanto a taking and depriving your orator of its property without due process of law in violation of Article XIV of the amendment to the Constitution of the United States, and thereby void and of no effect.

Wherefore your orator prays as it has heretofore prayed in its original bill of complaint, and further that the several persons made defendants may answer, but not under oath, such oath being hereby waived according to the practice of this court, all and singular the matters stated and charged in said original bill, and thus hereinbefore stated and charged, and may it please your Honors to grant to your orator writs of subpœna issued out of court and under the seal of this Honorable court directed to the defendants above named, thereby notifying them at a certain time and under a certain penalty to be and appear personally before this Honorable Court, and then and there to answer all and singular the matters contained in and set forth in this original bill, and in this amendment, and to stand, abide by, and perform such order, direction or decree as shall be made herein as to your Honors may seem meet and agreeable to equity and good conscience, and your orator will ever pray, etc.

THE OREGON RAILROAD & NAVIGATION COMPANY,
By W. W. COTTON,
[SEAL] *Its Secretary and General Attorney.*
W. W. COTTON &
H. F. CONNER,
Solicitors for Complainant.
W. W. COTTON,
Of Counsel for Complainant.

143 STATE OF OREGON,
County of Multnomah, ss:

I, W. W. Cotton, being first duly sworn, depose and say that I am the Secretary of the complainant company, that I signed the corporate name of the complainant company to the foregoing amend*ment* bill of complaint, and attached the corporate seal thereto.

I further say that I have read the foregoing amended bill of complaint, know the contents thereof, and that the same is in all respects true of my own knowledge, except as to the matters and things which are therein stated upon information and belief and as to those things, I believe the same to be true.

W. W. COTTON.

Subscribed and sworn to before me this 17th day of November, 1909.

BLANCHE LUCKEY,
[SEAL.] *Notary Public for Oregon.*

Service by copy admitted at — Nov. 18, 1909.

JOSEPH N. TEAL,
Solicitor for Defendant.

Amended complaint. Filed Nov. 18, 1909. G. H. Marsh, Clerk.

144 And Afterwards, to wit, on the 27th day of November, 1909, there was duly filed in said Court, a demurrer to the amended bill of complaint, in words and figures as follows, to wit:

145 In the Circuit Court of the United States for the District of Oregon.

No. —.

Demurrer.

THE OREGON RAILROAD & NAVIGATION CO., Complainant,
vs.
THOS. K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD, Defendants.

The Joint and Several Demurrers of Thos. K. Campbell, Clyde B. Aitchison, Oswald West and A. M. Crawford, Defendants Above Named to the Amended Bill of Complaint of Complainant Above Named.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things, in the said complainant's bill of complaint contained, to be true, in such manner and form as the same are therein set forth and alleged, do demur to said bill on the following grounds and each of them.

I.

That it appears upon the face of the bill herein that the Court has no jurisdiction of the subject matter of the controversy between the parties.

II.

That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by the said bill against these defendants, or any of the defendants.

III.

That said complainant has not in and by its said bill
146 stated such a case as doth or ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or any of them.

IV.

That it appears upon the face of the bill that the complainant has an adequate remedy at law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants demur thereto, and pray the judgment of this Honorable Court whether they shall be compelled to make any answer to said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

JOSEPH N. TEAL,
WIRT MINOR,
A. B. WINFREE,
A. M. CRAWFORD,
Solicitors and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well-founded in point of law.

A. B. WINFREE,
Of Counsel for Defendants.

Portland, Oregon, November 27th, 1909.

147 STATE OF OREGON,
County of Multnomah, ss:

Clyde B. Aitchison, being duly sworn, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed for delay.

CLYDE B. AITCHISON.

Subscribed and sworn to before me this 27th day of November, 1909.

A. B. WINFREE,
[SEAL.] *Notary Public for Oregon.*

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this the 27th day of November, 1909, by receiving a copy thereof being certified to as such by Joseph N. Teal, of Counsel for Defendants.

W. W. COTTON,
By J. G. W.,
Counsel for Complainants.

General demurrer to amended complaint filed November 27, 1909, G. H. Marsh, Clerk.

148 And Afterwards, to wit, on the 27th day of November, 1909, there was duly filed in said Court, a demurrer to portions of the amended bill of complaint, in words and figures as follows, to wit:

149 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION CO., Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

Demurrer to Portions of Complaint.

The Joint and Several Demurrers of Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, Defendants Above Named, to the Amended Bill of Complaint of Complainant Above Named.

These defendants appearing by protestation, not confessing or acknowledging all or any of the matters or things in said complainant's bill of complaint as amended by the complainant's amendment to bill of complaint filed herein, to-wit, November 18, 1909, to be true in such manner and form as the same are therein set forth and alleged, do demur as to so much and such part- of the bill of complaint as so amended as is contained in paragraphs VI, VII, VIII, IX, X, XI, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV of said original complaint as so amended, and also to what is designated as paragraph II of the amendment to bill of complaint aforesaid, and in each of said paragraphs on the following grounds and each of them.

I.

That it appears from the facts set forth in said paragraphs and in each and all of them that complainant is not entitled to the
150 relief or any part thereof prayed for from or against these defendants or any of the defendants.

II.

That the facts as set out in said paragraphs and each and all of them do not state a cause of suit or any part of a cause of suit against these defendants or any of the defendants.

And these defendants by protestation, not confessing or acknowledging any of the matters or things contained in said complainant's bill of complaint as so amended or in complainant's amendment to bill of complaint, to be true in such manner and form as the same are therein set forth and alleged, do further demur to the matters and

things set forth in the various paragraphs of said bill of complaint as amended and said amendment to the bill of complaint separately as to each paragraph for the reasons and grounds hereinafter set forth and for each of them.

Said defendants do demur separately to paragraph VI of said bill of complaint as so amended.

Said defendants do demur separately to paragraph VII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph VII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph IX of said bill of complaint as so amended.

Said defendants do demur separately to paragraph X of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XI of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XIII of said bill of complaint as so amended.

151 Said defendants do demur separately to paragraph XV of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XVI of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XVII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XVIII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XIX of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XX of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXI of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXIII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXIV of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXV of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXVI of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXVII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph XXVIII of said bill of complaint as so amended.

Said defendants do demur separately to paragraph designated II of complainant's amendment to bill of complaint.

Said defendants do demur separately to paragraph designated III of complainant's amendment to bill of complaint.

152 I.

That it appears from the facts set forth in each of said paragraphs and in all of them that complainant is not entitled to the relief or any part thereof prayed for from or against these defendants or any of the defendants.

II.

That the facts as set forth in each of said paragraphs and all of them do not state a cause of suit or any part of a cause of suit against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in said bill as amended and said amendment to bill of complaint, these defendants demur thereto, and pray the judgment of this Honorable Court whether they shall be compelled to make answer to said bill of complaint as amended and said amendment to bill of complaint, and they humbly pray to be dismissed with their costs in this behalf sustained.

JOSEPH N. TEAL,
WIRT MINOR,
A. B. WINFREE,
A. M. CRAWFORD,
Solicitors and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

A. B. WINFREE,
Of Counsel for Defendants.

Portland, Oregon, November 27, 1909.

153 STATE OF OREGON,
County of Multnomah, ss:

Clyde B. Aitchison, being duly sworn, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed for delay.

CLYDE B. AITCHISON.

Subscribed and sworn to before me this 27th day of November, 1909.

A. B. WINFREE,
[SEAL.] *Notary Public for Oregon, Residing at Portland, Oregon.*

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this, the 27th day of November, 1909, by re-

ceiving a copy thereof duly certified to as such by J. N. Teal, of counsel for defendants.

W. W. COTTON,
By J. G. W.
Counsel for Complainant.

Demurrer to portions of complaint. Filed November 27, 1909. G. H. Marsh, Clerk.

154 And Afterwards, to wit, on the 21st day of February, 1910, there was duly filed in said Court, an opinion, in words and figures as follows, to wit:

155 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
v.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants.

W. W. Cotton for complainant.
A. M. Crawford and Teal, Minor & Winfree for defendants.

WOLVERTON, *District Judge:*

The complainant now files an amendment to its bill of complaint, to which the defendants have interposed a demurrer. By the second paragraph it is alleged:

"That of the freight carried, and which will hereafter be carried, from Portland to points on your orator's lines in Oregon east of The Dalles under the class rates established and fixed by tariff No. L-525, at least forty per cent. thereof originates out of the State of Oregon, has been, is and will be shipped from Portland to points on your orator's lines east of The Dalles in the same packages in which it was originally shipped from the point of origin outside of the State of Oregon to Portland, and without coming to rest within the State of Oregon and without becoming part of the traffic of the State of Oregon, and at least twenty per cent. of the freight carried and which will hereafter be carried, from Portland on your orator's lines in Oregon east of The Dalles under the class rates established and fixed by tariff Number L-525 is, has been and will be shipped from Portland to points on your orator's lines in Oregon east of The Dalles by carriers and persons bringing the same to Portland from points without the State of Oregon with the intention of immediately and without delay shipping the same over the lines of your orator from Portland to points in Oregon east of The Dalles, and that the same has been, is and will be so brought into the State of Oregon, and so immediately shipped over the lines of your orator

from Portland to points in Oregon east of The Dalles, and that the class rates undertaken to be established by the said pretended order of the said Railroad Commission of Oregon by its terms applies to all of the freight mentioned in this amendment."

The purpose of the paragraph is to show that by the order the State Railroad Commission has exceeded its powers, and has
156 undertaken to regulate the rates of freight upon the transportation of interstate as well as intrastate commerce. The last clause above quoted—"And that the class rates undertaken to be established by the said pretended order of the said Railroad Commission of Oregon by its terms applies to all of the freight mentioned in this amendment"—is but a conclusion. Whether the rates prescribed so apply depends upon whether the freight specified falls within the category of interstate or intrastate commerce. If within the former, the order as I have heretofore interpreted it applies. If within the latter, it does not. This brings the discussion back again to the proper interpretation of the order. I have heretofore interpreted the rate there fixed as applying, and intended by the State Railroad Commission to apply, to intrastate traffic only. The interpretation given by the Supreme Court to the Employers' Liability Act (The Employers' Liability Cases, 207 U. S. 463), and that given to an order of the Secretary of Agriculture fixing a quarantine line running east and west dividing the State of Tennessee for the protection of stock from infectious diseases (Illinois Central Railroad v. McKendree, 203 U. S. 514), it is argued, is opposed to the interpretation given the present order. I am unable, however, to concur in that view. In each of those cases the language employed, in the former by the act and in the latter by the order, is so broad as to include by all reasonable intendment all commerce, whether State or interstate. So it was held that the act in the one case was unconstitutional, and the order in the other beyond the authority of the Secretary of Agriculture to make. While
157 the order here is possibly susceptible of two constructions, yet, under the rule that a statute should be upheld against an objection that it is inimical to the Constitution wherever it can be done without doing violence to the terms of the act, it seems it should be sustained. The interpretation of the order, though not a statute, should be governed by the rule. Such was the application of it in the case last cited. The rule is clearly stated and reaffirmed in El Paso & N. R. Co. v. Gutierrez, 30 Sup. Ct. R. 21, which contains a further interpretation of the Employers' Liability Act, upholding it in part.

The order here requires the complainant to cease and desist from charging any higher rates within the State for the transportation of merchandise and other commodities from the City of Portland to points on the defendant (complainant here) company's main, branch, leased or otherwise controlled railroad lines within the State of Oregon. This clause was incorrectly quoted in the main opinion as reading "between the City of Portland," etc. When we say from the City of Portland, it is reasonable to suppose that the Commission intended to cover commerce originating in Portland,

and thus the order is even strengthened above the form as quoted in the main opinion.

This is not a case involving a divisibility of the statute or order so that one part of it may stand and the other fall. Nor does the order here require the reading of any words into it so as to make it operative within the State only. The order is single, as its true intendment was and is to affect such traffic as originates within the state, or is property local to the state, and is carried to other points in the State. Or, to be more exact, as originates in Portland,
158 or is local thereto, and is carried from Portland to points upon the complainant's lines east of The Dalles. The pleadings in the case before the Commission, and its findings, as well as the order itself, all seem to indicate this, and hence the authorities cited in complainant's written brief do not apply.

I see nothing in the further argument or in the cases cited to disturb the view which I formrly entertained of the order. Paragraph 3 of the amended complaint is practically a reiteration of what was contained in the original bill by pleading a conclusion that the rates undertaken to be prescribed by the State Railroad Commission are unjust and unreasonable for the services contemplated to be performed. Hence the amendment could not be sustained if the original bill could not.

It still does not seem to me that this is the proper proceeding in which to determine the question attempted to be presented, as to whether goods shipped into Portland from outside the state in original packages, and sooner or later shipped out again to the interior of the state in the same unbroken packages, would constitute interstate commerce. This might depend upon how the goods were treated and considered while in Portland, or upon other conditions, that are not made to appear either by the original bill or by the amendment. If the order be valid, as it is held to be, then all shipments of commerce which are intrastate in character must be controlled by the order; all that are not are not affected by it. If question arises as to any particular shipment or any particular commodity to be move' or in process of transportation, it might be settled by carrying the matter to the Commission. Or, if the Com-
159 mission unlawfully exacts the State rate upon interstate traffic, I see no reason why it may not be enjoined in any court of competent jurisdiction. These special cases must necessarily be determined as they arise, as it is impossible, by a general decree, to determine in advance what specific commodities and the transportation thereof constitute interstate and what intrastate commerce.

The demurrer to the amended bill will be overruled and the suit dismissed.

Opinion. Filed Feb. 21, 1910. G. H. Marsh, Clerk.

160 And afterwards, to wit, on Friday, the 4th day of March, 1910, the same being the 129th Judicial day of the Regular October Term of said Court; Present: the Honorable Charles E.

Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

161 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION CO.
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD.

This cause came on for hearing upon the Demurrer of the Defendants to the amendment to the bill of complaint and the amended bill of complaint, and was argued by Mr. W. W. Cotton of counsel for Plaintiff and by A. B. Winfree of counsel for Defendants on Monday the 14th day of February, 1910: On consideration whereof it is hereby ordered and adjudged that the Demurrer of said Defendants to the amendment to the bill of complaint and to the amended complaint be, and the same is, hereby sustained, and said amendment to the bill of complaint and said amended complaint is hereby dismissed, and the restraining order heretofore issued herein, is hereby vacated and annulled, and it is further ordered that the Defendants herein have and recover of and from Complainant their costs and disbursements herein taxed in the sum of $—.

Dated this 4th day of March, 1910.

CHAS. E. WOLVERTON, *Judge.*

Order. Filed March 4, 1910. G. H. Marsh, Clerk.

162 And Afterwards, to wit, on the 19th day of May, 1910, there was duly filed in said Court, a petition of W. S. Smallwood for leave to intervene, in words and figures as follows, to wit:

163 In the Circuit Court of the United States for the District of Oregon.

In Equity. No. 3308.

THE OREGON RAILROAD AND NAVIGATION COMPANY, Complainant,
vs.
THOS. K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD, Defendants; W. S. SMALLWOOD, Intervenor.

Motion to Intervene.

Comes now W. S. Smallwood and moves the Court for leave to file his petition in intervention in the above entitled suit, a copy of which said petition is hereto attached marked Exhibit A, and made a part of this motion.

The foregoing motion will be based upon all of the records, papers, pleadings and files in the above entitled suit and upon the said proposed petition in intervention which is hereto attached.

JOSEPH N. TEAL,
WIRT MINOR,
A. B. WINFREE,
Counsel for Petitioner.

164 In the Circuit Court of the United States for the District of Oregon.

In Equity. No. 3308.

THE OREGON RAILROAD AND NAVIGATION COMPANY, Complainant,
vs.
THOS. K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD, Defendants; W. S. SMALLWOOD, Intervenor.

Petition in Intervention and Bill of Intervenor.

Petition for leave to intervene and the bill of intervention therefor of W. S. Smallwood against The Oregon Railroad and Navigation Company, complainant.

W. S. Smallwood brings this his petition for leave to intervene herein and presents this as his bill of intervention, leave *thereto* being first had and thereupon the petition shows:

To the Judges of the Circuit Court of the United States for the District of Oregon, sitting in equity:

I.

At all the times herein mentioned, and at the present time Allen & Lewis was and is a corporation duly incorporated under the laws of the State of Oregon, engaged in the wholesale grocery business in the City of Portland, Oregon.

II.

At all the times herein mentioned, and at the present time Lang & Co. was and is a corporation duly incorporated under the laws of the State of Oregon, engaged in the wholesale grocery business in the City of Portland, Oregon.

165 III.

Heretofore, to-wit, on the 22nd day of April, 1908, in a proceeding before the Railroad Commission of Oregon wherein Portland Chamber of Commerce was complainant and the above named complainant The Oregon Railroad and Navigation Company was defendant, said Railroad Commission of Oregon by order duly made

and entered fixed and established class rates to be charged by the said The Oregon Railroad and Navigation Company, between the City of Portland and other points and places within the State of Oregon, for the carriage of intra state freight under class rates over the lines of the above named complainant's railway in said State. A copy of said order was duly served on the complainant and is of record in the above entitled cause, and inte-venor prays the usual leave of reference thereto and by said reference prays to have said order taken and considered as a part of this bill of intervention with the same effect as though the same were fully set out herein. Said order became effective on the 12th day of May, 1908, and the said rates so fixed and established by said order have ever since said date been the only lawful class rates for the carriage of intra state traffic over the line of the above named complainant's railway between the City of Portland, Oregon, and other points and places on its said lines within the State of Oregon as set out in said order.

IV.

Thereafter and on or about the 11th day of May, 1908, the above named complainant brought this suit to restrain the enforcement of said order, and such proceedings were had that a temporary restraining order was issued pending the hearing on the complaint and amended complaint, and such proceedings were thereafter had that on the 21st day of February, 1910, said restraining order was vacated and dissolved and said amended bill of complaint dismissed.

166

V.

On or about the 2nd day of May, 1910, intervenor filed and presented his claims for reparation to the complainant for the amount of certain over payments of freight charges paid to complainant by one C. L. Thorne and Allen & Lewis upon intra state shipments of goods, wares and merchandise made by said Allen & Lewis to said C. L. Thorne and to said A. V. Oliver, over the lines of the complainant's railway from its stock in trade in Portland, Oregon, to La Grande, in said State, and for the amount of certain over payments of freight charges paid to complainant by the Baker City Grocery Company upon intra state shipments of goods, wares and merchandise made by said Lang & Co., to said Baker City Grocery Company over the lines of the complainant's railway from Portland, Oregon, to Baker City in said State.

VI.

Said claims were and each of them was duly presented to complainant and payment demanded for the difference between the amount of such payments as collected by and paid to said complainant as aforesaid on the basis of the rates established by its tariff No. L 525 and what such payments would have been under the said order of the said Railroad Commission of Oregon, the enforcement of which was temporarily restrained by the order of this honorable Court hereinabove referred to.

9 1

VII.

Said complainant declined and refused and still declines and refuses to pay said claims or either of them or any part thereof.

VIII.

Said claim and each of them were prior to their presentation to said complainant duly assigned by the consignees and the owners thereof heretofore named to the intervenor, W. S. Smallwood, who is now the legal owner and holder thereof.

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IX.

Said claim for over payments on the goods, wares and merchandise sold and shipped to said C. L. Thorne as aforesaid and the amount thereof is as follows:

Consignor—Allen & Lewis, Portland, Oregon.
Consignee—C. L. Thorne, La Grande, Oregon.
Way Bill—Issued at Portland, Oregon, July 9, 1909, No. 1058.
Freight Bill dated at La Grande, Oregon, July 12, 1909, No. 500.

Commodity.	Amount collected L 525.			Commission's rate.		Overpayment.
	Weight.	Rate.	Amount.	Rate.	Amount.	
1 cs Starch..... 46						
1 cs Catsup..... 61	105	.94	.99	.81	.85	
1 cs B. Beans... 59						
1 cs Vinegar.... 60						
5 cs Corn..... 210						
2 cs Oysters..... 95						
1 cs Soap..... 42						
1 sk Rice..... 100	565	.80	4.52	.69	3.90	
1 cs Chocolate.. 20						
1 cs " .. 15						
1 cs S. Tobc..... 35						
1 cs Crackers... 15						
1 cs Sausage.... 17						
1 cs Cocoanut... 22	125	1.14	1.42	.98	1.23	
1 sk Nuts..... 20						
2 bxs Groceries. 30	50	1.33	.66	1.15	.58	
			$7.59		$6.56	$1.03

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X.

Said goods, wares and merchandise were purchased by said Allen & Lewis in States other than Oregon to become a part of its common

stock in trade at Portland, Oregon, and were billed and transported to their said point of destination, towit: Portland, Oregon, by various means of carriage both water and rail, and on arrival at said City said Allen & Lewis surrendered the bills of lading therefor, paid the freight thereon, took possession of the same and the same were taken in original packages by the said Allen & Lewis to its store rooms and became a part of the common stock in trade carried by it for sale in said City of Portland, Oregon, and there held an indefinite period for sale and were thereafter sold from the said stock in said City in the original packages as received by said Allen & Lewis and transported to La Grande, Oregon, in said packages by the complainant.

XI.

Said claim for over payment on the goods, wares and merchandise shipped to said A. V. Oliver as aforesaid and the amount thereof is as follows:

Consignor—Allen & Lewis, Portland, Oregon.
Consignee—A. V. Oliver, La Grande, Oregon.
Way Bill—Issued at Portland, Oregon, March 5, 1909, No. 765-½.
Freight Bill dated at La Grande, Oregon, March 8, 1909, No. 323.

Commodity.	Amount collected L 525.			Commission's rate.		Overpayment.
	Weight.	Rate.	Amount.	Rate.	Amount.	
400 sacks Sugar, O. R.	40,400	.64	$258.56	.58	$234.32	$24.24

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XII.

Said sugar so shipped was a portion of a lot of sugar purchased in California by said Allen & Lewis to become a part of its common stock in trade at Portland, Oregon, and was billed and transported to its said point of destination, to wit: Portland, Oregon, by water by the Richardson Steamship Line, an independent water carrier not under common control or management by or with the complainant and having no joint tariffs, through rates, arrangements or connections with the complainant for continuous carriage or shipment or otherwise. On arrival at said city said Allen & Lewis surrendered the bills of lading therefor, paid the freight thereon, took possession of the same and the same was taken in original packages by said Allen & Lewis to its store and warehouse and became a part of its common stock in trade carried by it for sale and there held an indefinite period for sale and was thereafter shipped from its said stock in Portland, Oregon, in the original packages as

received by said Allen & Lewis and transported to La Grande, Oregon, in said packages by the complainant and delivered to said Oliver who held the same for the account of and subject to the order of said Allen & Lewis.

XIII.

Said claim for over payment on the goods, wares and merchandise sold and shipped to said Baker City Grocery Company as aforesaid and the amount thereof is as follows:

Consignor—Lang & Co., Portland, Oregon.
Consignee—Baker City Grocery Company, Baker City, Oregon.
Bill of Lading issued at Portland, Oregon, by The Oregon Railroad and Navigation Company, March 14, 1910.
Freight Bill dated at Baker City, Oregon, March 21, 1910.

170 Commodity.	Amount collected L 525.			Commission's rate.		Overpayment.
	Weight.	Rate.	Amount.	Rate.	Amount.	
350 Sacks Fruit Sugar 10 " X.C. Sugar 10-35 Tin Bar Sugar..	36,790	.65	$424.45	.59	$217.12	$25.33

XIV.

Said sugar was purchased in the State of California by said Lang & Co. for future sale by it at Portland, Oregon, with the intention of shipping it from Portland to some point within the State of Oregon. Said sugar was sold and billed to Lang & Co. and transported to Portland, Oregon, its point of destination, by the Richardson Steamship Line, an independent water carrier not under common control or management by or with the complainant and having no joint tariffs, through rates, arrangements or connections with the complainant for continuous carriage or shipment or otherwise. On arrival of the sugar at said City of Portland, said Lang & Co. surrendered its bill of lading therefor, paid the freight charges thereon and took possession of the same in the original packages as shipped from San Francisco. Thereupon said sugar was insured against loss by fire by said Lang & Co. in its own name and as owner thereof while in warehouse at Portland, Oregon, and was held by said Lang & Co. in warehouse until sold and cars supplied for loading, and the same was sold after its arrival at Portland, Oregon, to said Baker City Grocery Company by Lang & Co. at Portland, Oregon, reshipped from said City by Lang & Co. to said Baker City Grocery Company at Baker City, Oregon, over the lines of the complainant under a bill of lading issued to said Lang & Co. therefor, and was transported by complainant under said bill

of lading in the original packages to Baker City, Oregon, and there delivered by complainant to said Baker City Grocery Com-
171 pany, the consignee named in said bill of lading, and the charges collected thereon from said Baker City Grocery Company for transporting the same from Portland to Baker City.

Intervenor alleges that each and all of said shipments was and were intra state shipments and as such were subject to be transported under the rates prescribed by the Railroad Commission of Oregon, as in its order hereinbefore referred to and set out.

Wherefore the intervenor now prays that The Oregon Railroad and Navigation Company, complainant herein, may be ordered to enter an appearance to this intervening bill and may be required to answer the same and to show cause why it has not paid the intervenor's claims as set out in this intervening bill of complaint and that in the said order to show cause the complainant may be cited to appear herein and answer this intervening bill though not under oath, oath or affirmation thereto by the said The Oregon Railroad and Navigation Company being hereby expressly waived and that upon hearing of the intervenor's bill a decree may be entered decreeing to the intervenor such relief as upon this bill, and the answer thereto and on file herein may be meet and equitable that he should have.

W. S. SMALLWOOD,
By JOSEPH N. TEAL,
Solicitor.

JOSEPH N. TEAL,
WIRT MINOR,
A. B. WINFREE,
Solicitors and of Counsel.

STATE OF OREGON,
County of Multnomah, ss:

I, W. S. Smallwood, being first duly sworn, depose and say that I am the intervenor named in the foregoing bill of complaint
172 of intervention. I further state that I have read the foregoing bill of complaint, know the contents thereof and that the same is in all respects true to my own knowledge, except as to the matters and things which are therein stated upon information and belief, and as to these things I believe the same to be true.

W. S. SMALLWOOD.

Subscribed and sworn to before me this 13th day of May, 1910.

[SEAL.] W. A. JOHNSON,
Notary Public for Oregon.

Service by copy admitted at Portland, Oregon, May 18, 1910.

W. W. COTTON,
Solicitor for Complainant.

Bill of intervention. Filed May 19, 1910. G. H. Marsh, Clerk.

173 And Afterwards, to wit, on the 11th day of July, 1910, there was duly filed in said Court, an opinion, in words and figures as follows, to wit:

174 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
v.
THOMAS K. CAMPBELL, CLYDE B. AITCHINSON, OSWALD WEST, and A. M. CRAWFORD, Defendants; W. S. SMALLWOOD, Intervenor.

W. W. Cotton for Complainant.
Teal, Minor & Winfree for the Intervenor.

WOLVERTON, *District Judge:*

The purpose of this proceeding is to recover from the complainant above named, through intervention of W. S. Smallwood, overcharges on freight shipped out of Portland and Baker City, being the difference between the tariff adopted by the State Board of Railroad Commissioners for the transportation of freight intrastate in character and the tariff fixed by the railroad companies upon interstate traffic, under what is known and designated as tariff L-525. Three shipments are involved, each under slightly different conditions. The first relates to a shipment of groceries in general, and the other two to the article of sugar. As to these it is specified as follows:

175 1.

"Said goods, wares and merchandise were purchased by said Allen & Lewis in states other than Oregon to become a part of its common stock in trade at Portland, Oregon, and were billed and transported to their said point of destination, to-wit, Portland, Oregon, by various means of carriage, both water and rail, and on arrival at said city said Allen & Lewis surrendered the bills of lading therefor, paid the freight thereon, took possession of the same, and the same were taken in original packages by the said Allen & Lewis to its store rooms and became a part of the common stock in trade carried by it for sale in said City of Portland, Oregon, and there held an indefinite period for sale and were thereafter sold from the said stock in said city in the original packages as received by said Allen & Lewis and transported to La Grande, Oregon, in said packages by the complainant."

2.

"Said sugar so shipped was a portion of a lot of sugar purchased in California by said Allen & Lewis to become a part of its common stock in trade at Portland, Oregon, and was billed and transported

to its said point of destination, to-wit, Portland, Oregon, by water by the Richardson Steamship Line, an independent water carrier not under common control or management by or with the complainant and having no joint tariffs, through rates, arrangements or connections with the complainant for continuous carriage or shipment or otherwise. On arrival at said city said Allen & Lewis surrendered the bills of lading therefor, paid the freight thereon, took possession of the same, and the same was taken in original packages by said Allen & Lewis to its store and warehouse and became a part of its common stock in trade carried by it for sale, and there held an indefinite period for sale, and was thereafter shipped from its said stock in Portland, Oregon, in the original packages as received by said Allen & Lewis, and transported to La Grande, Oregon, in said packages by the complainant and delivered to said Oliver, who held the same for the account of and subject to the order of said Allen & Lewis."

3.

"Said sugar was purchased in the State of California by said Lang & Co. for future sale by it at Portland, Oregon, with the intention of shipping it from Portland to some point within the state of Oregon. Said sugar was sold and billed to Lang & Co. and transported to Portland, Oregon, its point of destination, by the Richardson Steamship Line, an independent water carrier not under common control or management by or with the complainant and having no joint tariffs, through rates, arrangements or connections with the complainant for continuous carriage or shipment or otherwise. On arrival of the sugar at said City of Portland, said Lang & Co. surrendered its bill of lading therefor, paid the freight charges
176 thereon and took possession of the same in the original packages as shipped from San Francisco. Thereupon said sugar was insured against loss by fire by said Lang & Co. in its own name and as owner thereof while in warehouse at Portland, Oregon, and was held by said Lang & Co. in warehouse until sold and cars supplied for loading, and the same was sold after its arrival at Portland, Oregon, to said Baker City Grocery Company by Lang & Co. at Portland, Oregon, reshipped from said city by Lang & Co. to said Baker City Grocery Company at Baker City, Oregon, over the lines of the complainant under a bill of lading issued to said Lang & Co. therefor, and was transported by complainant under said bill of lading in the original packages to Baker City, Oregon, and there delivered by complainant to said Baker City Grocery Company, the consignee named in said bill of lading, and the charges collected thereon from said Baker City Grocery Company for transporting the same from Portland to Baker City."

The especial contention of the railroad company is, that the goods included in these shipments partake of the character of interstate commerce, and hence that they should take the rate under tariff L-525, notwithstanding the transportation thereof was wholly within the state. It is so contended from the fact that the goods were shipped into the state in original packages, and that they were

shipped from the point of their arrival within the state to other points within the state in the same original packages. In other words, it is maintained that goods do not lose their character as interstate commerce while handled in the original packages in which they enter the state. This would lead, of course, to the doctrine that Once interstate commerce in the original package always interstate commerce, in its most comprehensive sense, until the packages are broken. I am not impressed with the soundness of the position. The idea is based on what are known as the Original Package Cases of the Supreme Court, the leading one being Leisy v. Hardin,
177 135 U. S. 100. A different principle is involved here, however, from that applied there. It was maintained there, and so determined by the court, that it was an interference with interstate commerce for one state to inhibit the sale of beer in original packages or kegs, unbroken and unopened, by the importer from another state. It is said in that case, p. 124:

"Under our decision in Bowman v. Chicago &c. Railway Co., supra (125 U. S. 465), they (the importers) had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State."

It would seem that the act of sale alone within the state to which it was imported, whether such sale was in original or broken packages, would liberate the article from the character of interstate commerce, and henceforth "it would become mingled in the common mass of property within the State." And while it is true, as is said in another place in the same opinion (p. 112) that "the transportation of freight or of the subjects of commerce, for the purpose of exchange or sale, is beyond all question a constituent of commerce itself," yet it must be that a different principle applies to the carrier of freight from that which appertains to the importer of goods. An importer may insist that he has a right to sell goods that he has brought into a state from another state, while in the original packages, but it would not follow that a carrier has the right to treat those goods as interstate commerce so long as they remain in that condition, or unsold by the importer. The carrier depends rather upon his contract of carriage, and interstate traffic as to him de-
178 pends upon whether he is called upon to transport from one state to another, or to serve his patrons by transportation wholly within the limits of a state.

Nor does it seem to me that the principle applied in the Tax Cases is wholly applicable here. That principle rests, not upon the fact that the property taxed has ceased to be interstate commerce, but upon the condition that it has, in the course of its transportation, arrived at its destination, is at rest and enjoying the protection which the law of the state afford, and is taxed without discrimination like all other property. Such is the doctrine of American Steel & Wire Co. v. Speed, 192 U. S. 500. The court in this case adheres to the rule announced in Leisy v. Hardin, supra, that the fact of sale at point of destination was essential to relieve the property from the character of interstate commerce, but holds

that, notwithstanding the property continues to be interstate commerce, it may yet be taxed by the state in which it has come to rest, under the conditions just narrated. The doctrine has been reaffirmed in General Oil Company v. Crain, 209 U. S. 211.

Transportation from a point in one state to a point in another is undoubtedly interstate commerce. But, says the court in Gulf, Colorado & Santa Fe Ry. Co. v. Texas, 204 U. S. 403, 409:

"When the commodity transported has reached the termination of its journey and has been delivered to the consignee, it ceases to be a subject of interstate commerce, and the subsequent shipment from the point at which it has been delivered to another point in the State, is an intrastate shipment."

179 The case turns upon the contract of shipment between the shipper and carrier, and when that is at an end, the shipper can claim nothing further as it respects the property carried. It is then at the command of the owner, and if he chooses to ship it again from one point to another in the state, it becomes an intrastate shipment, notwithstanding the owner may be dealing with an article of interstate commerce. For illustration, take the case of Leisy v. Hardin, supra; where beer was shipped into Iowa in original packages, the owner could not be deprived of the right to sell the beer while it remained in original packages because it was an article of interstate commerce. The shipment of the beer to him from another state was an interstate shipment. When that shipment was at an end, another carrier, who might transport the beer to another point in the State of Iowa, could not claim that the shipment was interstate because the article might be characterized interstate commerce in the hands of the owner. There must be, and is, a distinction between interstate commerce as it pertains to the article and interstate commerce as it pertains to transportation and carriage. The former depends upon the fact that it is an article of commerce, that is, of barter and sale, between the states or with foreign countries, and the latter upon the fact that it is being transported from one state into another. When the transportation ceases or comes to an end, the shipment has lost its character as an interstate shipment, and if the commodity is again moved it becomes an intrastate

180 or interstate shipment according as it is moved to a point wholly within the state or a point without.

I am constrained to the view that the case of Gulf, Colorado & Santa Fé Ry. Co. v. Texas, supra, is controlling in this, and I therefore hold that the intervenor is entitled to the rebate demanded in each of the three shipments specified. Let the decree be entered accordingly.

Opinion. Filed July 11, 1910. G. H. Marsh, Clerk.

181 And afterwards, to wit, on Tuesday, the 12th day of July, 1910, the same being the 78th Judicial day of the Regular April Term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, towit:

182 In the Circuit Court of the United States for the District of Oregon.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD, Defendants; W. S. SMALLWOOD, Intervenor

Decree.

Now at this time this cause coming on for decree upon the petition in intervention heretofore filed herein, and the court being fully advised in the premises, and finding that heretofore and on May the 19, 1910, by an order of court allowing thereof, W. S. Smallwood filed his petition of intervention in the above entitled cause, and an order to show cause why the relief prayed for in said petition should not be granted was issued thereon, made returnable on the 2nd day of June, 1910, and on said 2nd day of June, all of the parties hereto appearing in open court by counsel, and complainant, Oregon Railroad & Navigation Company confessing the truth of the facts alleged and set forth in said petition, the matter was thereupon duly argued by counsel, and thereupon upon consideration thereof, it was

Ordered, Adjudged and Decreed as follows:

I.

183 That the facts set forth in said intervening bill of complaint and admitted by complainant show the shipments therein mentioned to be Intrastate and not Interstate Commerce.

II.

That the shipments mentioned and set forth in said intervening bill of complaint are properly controlled and regulated by the Railroad Commission of Oregon and the rates fixed by said Railroad Commission are the proper lawful rates to be applied thereto.

III.

That the sums exacted by the O. R. & N. Co. for the carriage of the goods described in the intervening bill of complaint in excess of the maximum rates designated by the Railroad Commission of Oregon were unlawfully exacted.

IV.

That the Oregon Railroad & Navigation Company do pay to W. S. Smallwood, intervenor herein, the sum of One Dollar Three Cents ($1.03), the overcharge on the shipment mentioned in paragraph 9

in said intervening bill of complaint; and the further sum of Twenty Four Dollars Twenty-four Cents ($24.24), the overcharge on the shipment mentioned in paragraph 11 in said intervening bill of complaint; and the further sum of Twenty-five Dollars Twenty-three Cents ($25.23), the overcharge on the shipment mentioned in paragraph 13 in said intervening bill of complaint, and that said intervenor recover his costs and disbursements herein taxed at $—.

Dated at Portland, Oregon, this 12th day of July, A. D., 1910.

CHAS. E. WOLVERTON, *Judge.*

Service by copy admitted at Portland, Oregon, July 15, 1910.

W. W. COTTON,
Attorney for Complainant.

Decree. Filed July 12, 1910. G. H. Marsh, Clerk, By J. W. Marsh, Deputy.

184 And Afterwards, to wit, on the 2nd day of September, 1910, there was duly filed in said Court, a petition for appeal, in words and figures as follows, to wit:

185 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, a Corporation, Complainant and Appellant,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants and Appellees.

Petition for Appeal.

The Oregon Railroad & Navigation Company, the above named complainant and appellant, conceiving itself aggrieved by the final order and judgment made and entered in the above entitled cause on the 4th day of March, 1910, hereby appeals from said final order and judgment, and the whole thereof, to the United States Supreme Court, which said decree is substantially in words and figures as follows, omitting title, date and signature, to-wit:

"This cause came on for hearing upon the demurrer of the defendants to the amendment to the bill of complaint and the amended bill of complaint, and was argued by Mr. W. W. Cotton of counsel for Plaintiff and by A. B. Winfree of counsel for Defendants on Monday the 14th day of February, 1910; On consideration whereof it is hereby ordered and adjudged that the Demurrer of said Defendants to the amendment to the bill of complaint and to the amended complaint be, and the same is, hereby sustained, and said amendment to the bill of complaint and said amended complaint is

hereby dismissed, and the restraining order heretofore issued herein, is hereby vacated and annulled, and it is further ordered that the Defendants herein have and recover of and from Complainant their costs and disbursements herein taxed at the sum of $—."

Said The Oregon Railroad & Navigation Company prays that its appeal to the United States Supreme Court may be allowed, and that a transcript of the record and proceedings, and papers upon which said final order and judgment were made, duly authenticated,
186 may be sent to said United States Supreme Court, and that there be included in said transcript and papers a transcript of the proceedings and judgment of this court on the intervention of W. S. Smallwood in said cause; and now, at the time of filing this petition for appeal, The Oregon Railroad & Navigation Company, appellant, files an assignment of errors setting up particularly each error asserted and intended to be urged in the United States Supreme Court.

Petitioner further prays that this Court fix the amount of the bond or security which your petitioner shall give to effect said appeal.

And your petitioner will ever pray.

Dated at Portland, Oregon, this 2nd day of September, 1910.

THE OREGON RAILROAD & NAVIGATION COMPANY, *Appellant.*

By W. W. COTTON,
JAMES G. WILSON, *Solicitors.*

Service by copy admitted at Portland, Or., Sept. 2, 1910.

A. B. WINFREE,
Of Solicitors for Defendants.

Petition for Appeal. Filed September 2, 1910. G. H. Marsh, Clerk, By J. W. Marsh, Deputy.

187 And Afterwards, to wit, on the 2nd day of September, 1910, there was duly filed in said Court, assignments of error, in words and figures as follows, to wit:

188 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, a Corporation, Complainant and Appellant,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants and Appellees.

Assignment of Errors.

The Oregon Railroad & Navigation Company, the above named complainant and appellant, having this day petitioned for an appeal

from the final decree, order and judgment entered in the above entitled cause on the 4th day of March, A. D. 1910, hereby submits, and herewith files this assignment of errors asserted and intended to be urged in the United States Supreme Court.

Said The Oregon Railroad & Navigation Company by its solicitors, says, that in the records and proceedings aforesaid, there is manifest error, in this:

1. That the said court erred in making and entering an order sustaining the joint and several demurrer of the defendants to the complainant's original bill of complaint.

2. That the said court erred in making and entering an order sustaining the joint and several demurrer of the defendants to specific portions of the complainant's original bill of complaint.

3. That the said court erred in making and entering an order sustaining the joint and several demurrer of the defendants to the amendment to the bill of complaint.

189 4. That the said court erred in making and entering an order sustaining the joint and several demurrer of the defendants to the amended bill of complaint of the complainants.

5. That the said court erred in making and entering an order sustaining the joint and several demurrer of the defendants to portions of the amended bill of complaint.

6. That the said court erred in holding and deciding that the order of the railroad commission of Oregon, establishing the rates sought to be enjoined, was not a regulation of interstate commerce, and was not a violation nor in contravention of the provision of the Constitution of the United States to the effect that Congress shall have power to regulate commerce with foreign nations and among the several states.

7. That the said court erred in holding and deciding that the fines and penalties prescribed by the act of the legislature of Oregon, establishing the said railroad commission of Oregon, and prescribing certain fines and penalties for the violation of the provisions of said act, were not exorbitant or drastic, and did not deprive the complainant of the equal protection of the laws and subject its property to be taken without due process of law, in violation and contravention of the Constitution of the United States.

8. That the said court erred in holding and deciding that the order of the railroad commission of Oregon sought to be enjoined did not prevent the complainant from making fair net earnings on the services involved, and did not deprive the complainant of its property without due process of law.

9. Said court erred in holding and deciding that the rates established by the order of the railroad commission of Oregon sought to be enjoined, are reasonable, just and fair.

190 10. That the said court erred in holding and deciding that the act of the legislature of Oregon establishing the railroad commission of Oregon and prescribing its duties, did not confer upon the said commission legislative, executive and judicial functions in violation of the Constitution of the state of Oregon.

11. That the said court erred in signing and entering the judg-

ment and decree in favor of the defendants and against the complainants, dismissing this cause and suit, and giving judgment in favor of the defendants and against the complainants for costs.

Said The Oregon Railroad & Navigation Company prays that said judgment, order and decree aforesaid may be reviewed.

THE OREGON RAILROAD & NAVIGATION COMPANY, *Appellant,*
By W. W. COTTON,
JAMES G. WILSON, *Solicitors.*

Service by copy admitted at Portland, Or., Sept. 2, 1910.

A. B. WINFREE,
Of Solicitor for Defendants.

Assignments of Error. Filed September 2, 1910. G. H. Marsh, Clerk, By J. W. Marsh, Deputy.

191 And afterwards, to wit, on Friday, the 2nd day of September 1910, the same being the 123rd Judicial day of the Regular April, term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

192 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, a Corporation, Complainant and Appellant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants and Appellees.

SEPTEMBER 2, 1910.

Order Allowing Appeal.

Now, on this 2nd day of September, A. D., 1910, the petition of the complainant and appellant, The Oregon Railroad & Navigation Company, for an order allowing an appeal to the United States Supreme Court, from the final decree, order and judgment rendered and entered in this cause, by this court, on the 4th day of March, A. D., 1910, coming on regularly for hearing, and the court, being fully advised in the premises,

It is hereby ordered that the said appeal be, and the same hereby is allowed, and that a transcript of the record and proceedings, and papers upon which said final order and judgment were made, duly authenticated, be sent to said United States Supreme Court, and that

there be included in said transcript and papers a transcript of the proceedings and judgment of this court on the intervention of W. S. Smallwood in said cause; That the amount of the bond on appeal be and the same hereby is fixed at the sum of one thousand dollars ($1000.00).

CHAS. E. WOLVERTON,
Judge of the Circuit Court of the United States for the District of Oregon.

Service by copy admitted at Portland, Or. Sept. 2, 1910.

A. B. WINFREE,
Of Solicitors for Defendant.

Order Filed Sept. 2, 1910. G. H. Marsh, Clerk, By J. W. Marsh, Deputy.

193 And Afterwards, to wit, on the 2nd day of September, 1910 there was duly Filed in said Court, a bond on appeal, in words and figures as follows, to wit:

194 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, a Corporation, Complainant and Appellant,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants & Appellees.

Bond on Appeal.

Know all men by these presents: That we, The Oregon Railroad & Navigation Company, a corporation, and the National Surety Company, a corporation organized and existing under and by virtue of the laws of the state of New York, are held and firmly bound, unto Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, jointly and severally, and to each of them, in and for the full sum of One Thousand (1000) Dollars, lawful money of the United States, to be paid to said Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, and to their successors or assigns, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each of our, successors or assigns, firmly by these presents.

Sealed with our seals, and dated this 2nd day of September, A. D., 1910.

Whereas, the above named The Oregon Railroad & Navigation Company has appealed to the United States Supreme Court to

reverse the judgment in the above entitled cause made and entered by the Circuit Court of the United States for the district of
195 Oregon, on the 4th day of March, 1910;

Now, therefore, the condition of this obligation is such that if the above named, The Oregon Railroad & Navigation Company, complainant and appellant, shall prosecute said appeal to effect, and answer all costs awarded against it, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] THE OREGON RAILROAD & NAVIGATION COMPANY,
By W. W. COTTON, *General Attorney.*

Attest:
W. W. COTTON, *Assistant Secretary.*

[SEAL.] NATIONAL SURETY COMPANY,
By JAS. McI. WOOD, *Its Attorney-in-Fact.*

Signed, sealed and delivered in the presence of us as witnesses as to O. R. & N. Co.

JAMES G. WILSON.
S. Z. RILEA.

As to Natl. Surety Co.

E. BERNI.
BLANCHE I. SKINNER.

The foregoing bond is hereby approved.
Done in open court this 2nd day of September, 1910.

CHAS. E. WOLVERTON, *Judge.*

Service by copy admitted at Portland, Or. Sept. 2, 1910.

A. B. WINFREE,
Of Solicitors for Defendants.

Bond on Appeal Filed September 2, 1910 G. H. Marsh, Clerk, By J. W. Marsh, Deputy.

196 And Afterwards, to wit, on the 7th day of September 1910, there was duly Filed in said Court, a præcipe for transcript of record, in words and figures as follows, to wit:

197 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, a Corporation, Complainant and Appellant,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants and Appellees.

Præcipe.

To G. H. Marsh, Clerk of the above entitled court:

Whereas, The Oregon Railroad & Navigation Company has appealed from the judgment in the above entitled cause, made and entered on March 4, 1910, to the Supreme Court of the United States, and desires a record to be certified to the said United States Supreme Court in accordance with the order of the above entitled court, made and entered on September 2nd, 1910, will you therefore please certify for said record the following records in said cause:

1. Original bill of complaint.
2. Subpœnas ad respondendum, addressed to Clyde B. Aitchison, Oswald West, Thomas K. Campbell, and A. M. Crawford, and the return of the United States Marshal on said subpœnas.
3. Order dated May 20, 1908, continuing hearing of the show cause order to May 26, 1908, and allowing amendment by interlineation.
4. The appearances of counsel for the defendants.
5. The joint and several demurrer of the defendants to the bill of complaint.
6. The joint and several demurrer of defendants to portions of the complaint.
7. Order of September 28, 1909, sustaining demurrer to bill of complaint, denying motion for preliminary injunction, and
198 continuing restraining order in force twenty days pending application for leave to amend bill.
8. Opinion filed September 28, 1909.
9. Amendment to bill of complaint filed November 18, 1909.
10. Joint and several demurrer of defendants to amended bill of complaint.
11. Joint and several demurrer of defendants to portions of amended bill of complaint.
12. Opinion filed February 21, 1910.
13. Judgment and decree filed March 4, 1910.
14. Petition of intervention of W. S. Smallwood, and motion for leave to file same.

15. Opinion on intervention.
16. Judgment or decree on intervention.

W. W. COTTON,
JAMES G. WILSON,
Solicitors for Complainant and Appellant.

Præcipe. Filed Sept. 7, 1910. G. H. Marsh, Clerk.

199 And Afterwards, to wit, on the 10th day of October 1910 there was duly Filed in said Court, a stipulation, in words and figures as follows, to wit:

200 In the Circuit Court of the United States for the District of Oregon.

No. 3308.

THE OREGON RAILROAD & NAVIGATION COMPANY, Complainant and Appellant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Defendants and Appellees.

Stipulation.

It is hereby stipulated by and between the solicitors for the respective parties that in the preparation and certification of the transcript of the record on the appeal in the United States Supreme Court in this cause, that the clerk of the circuit court need not certify and return, as part of the transcript, the following exhibits to plaintiff's bill of complaint and filed May 11, 1908, to wit: Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and N, and the following exhibits filed July 6, 1908, to wit: Exhibits A and B.

It is further stipulated, however, that copies of said exhibits, identified by the signatures of one of the solicitors for each party, may be forwarded by the clerk of the circuit court with the transcript to the clerk of the United States supreme court, and such copies of said exhibits so identified shall be used on the trial and hearing of said cause in the United States supreme court, and by the clerk of the United States supreme court for all the purposes of preparing the record in said cause, as fully and to all intents and purposes as if the same had been certified by the clerk of the circuit court in said cause.

W. W. COTTON,
JAMES S. WILSON,
Solicitors for Complainant and Appellant.
JOSEPH N. TEAL,
WIRT MINOR,
A. B. WINFREE,
Solicitors for Defendants and Appellees.

201 Filed, October 10, 1910. G. H. Marsh, Clerk.

202 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on appeal, in cause No. 3308, The Oregon Railroad & Navigation Company, a corporation, Complainants and Appellants, vs. Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford, Defendants and Appellees, in obedience to the within order allowing appeal and in accordance with the præcipe of said appellants filed therein, and that the foregoing pages numbered from four to 201, inclusive, contain a true and complete transcript of the records and proceedings had in said cause, designated by said præcipe to be included in said transcript, as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Portland, in said district, this 14th day of October, A. D. 1910.

[Seal United States Circuit Court, Oregon.]

G. H. MARSH, *Clerk.*

203 In the Supreme Court of the United States.

THE OREGON RAILROAD AND NAVIGATION COMPANY, Appellant,
vs.
THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, and A. M. CRAWFORD, Appellees.

Stipulation.

It is stipulated by the parties in the above entitled suit that the following exhibits, or parts of exhibits, shall be printed by the clerk of the Supreme Court as part of the transcript on this appeal, to wit:

Exhibit "A" being the Railroad Commission Act in the state of Oregon.

Exhibit "B" being Union Pacific Tariff I. C. C. No. 1578, Joint Freight Tariff applying on Merchandise and Commodities between Chicago and other points and stations on the line of The Oregon Railroad and Navigation Company.

Exhibit "C" being a supplement to the above tariff.

Exhibit "D" being a supplement to the above tariff.

Exhibit "E" being a supplement to the above tariff.

Exhibit "I" being order of the Railroad Commission of the state of Oregon.

It is also stipulated that there shall likewise be printed exhibit

"H," being tariff L-525, except the map on the last page thereof, which need not be printed.

It is also stipulated that there shall likewise be printed so much of exhibit "M," being the Western Classification, as appears
204 in pages I. to LVIII. inclusive, and from 1 to 32, inclusive, being all that part of the tariff commencing with the cover and ending with page 32, Arabic numbering.

It is further stipulated that none of the other exhibits need be printed, but that either party may refer thereto or to any part thereof, or to any part of exhibit "M" not stipulated to be printed.

W. W. COTTON,
JAMES G. WILSON,
Attorneys for Appellants.
JOSEPH N. TEAL,
Attorney for Appellee.

[Endorsed:] File No. 22,374. Supreme Court U. S., October Term, 1910. Term No. 753. The Oregon Railroad & Navigation Co., Appellant, vs. Thomas K. Campbell et al. Stipulation as to printing Exhibits as part of record. Filed December 5, 1910.

113

PUBLISHED BY AUTHORITY

AN ACT

TO REGULATE

Transportation and Commerce, Etc.

AND CREATING A

RAILROAD COMMISSION

OF THE

STATE OF OREGON

1907

[SEAL OF STATE OF OREGON]

SALEM, OREGON
1907

RAILROAD COMMISSION LAW OF 1907.

AN ACT

To regulate transportation and commerce, and common carriers thereof in this State, and, for that purpose, to create a Railroad Commission of Oregon, to provide for the appointment and election thereof, to fix the qualifications, salaries, powers and duties of said commission, and the members thereof, and authorizing them to make and alter their rules and regulations, and to provide for demurrage, and reciprocal demurrage, and for penalties for failure to furnish cars, and to regulate the mode and manner of establishing, making and maintaining railroad crossings and connections, and to prevent unjust rates being imposed, and unjust discrimination by the carriers subject to this Act, and to insure adequate service by them, prescribing penalties for the violation of the provisions of this Act, prescribing the procedure and rules of evidence in relation thereto, making an appropriation to carry out the provisions hereof, and repealing so much of Section 5095, of the Codes and Statutes of Oregon, compiled and annotated by Hon. Charles B. Bellinger and William W. Cotton, as is inconsistent with the provisions of this Act, and declaring an emergency.

Be it enacted by the people of the State of Oregon:

COMMISSION CREATED—NUMBER OF MEMBERS—TERM OF OFFICE APPOINTMENT AND CONFIRMATION—ELECTION—VACANCIES.

Section 1. A Railroad Commission is hereby created, to be composed of three commissioners. Immediately after the taking effect of this Act the Governor, Secretary of State, and State Treasurer, or a majority of them, shall appoint such commissioners; one of whom shall be from the State at large, one from the first congressional district, and one from the second congressional district. The term of office of the commissioner appointed from the State at large shall expire on the first Monday in July, 1910, and his successor shall be elected by the voters of the State at the regular biennial election in June, 1910, for the full term of four years. The term of office of the other two commissioners shall expire in July, 1908, and their successors in office shall be elected by the voters of the congressional district from which they were appointed in June, 1908, for the full term of four years, and the successors in office of such commissioners shall be chosen by the voters of the State at large, or of the several congressional districts, as other State and congressional officers are elected for the full term of four years. Each commis-

sioner appointed or elected under the provisions of this Act shall hold office until his successor is appointed or elected and qualified. Any vacancy shall be filled by appointment by the Governor, Secretary of State and State Treasurer for the unexpired term. Not more than two commissioners shall be appointed from the same political party.

QUALIFICATIONS OF COMMISSIONERS—REMOVAL—INTEREST IN RAILROADS FORBIDDEN—OATH AND BOND.

Section 2. The Governor, Secretary of State, and State Treasurer may, at any time, remove any commissioner, appointed by them, for inefficiency, neglect of duty, or malfeasance in office. Before such removal they shall give such commissioner a copy of the charges against him, and shall fix the time when he can be heard in his own defense, which shall not be less than ten days thereafter, and such hearing shall be open to the public. If he shall be removed, the Governor, Secretary of State, and State Treasurer shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner, and their findings thereon, with a record of the proceedings. Such power of removal shall be absolute, and there shall be no right to review of the same in any court whatsoever.

No person so appointed or elected shall be pecuniarily interested in any railroad in this State, or elsewhere, and if any such commissioner shall voluntarily become so interested, his office shall *ipso facto* become vacant; and if he shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of said interest; failing to do so his office shall become vacant.

No commissioner, nor the secretary, shall hold any other office or position of profit, or pursue any other business or vocation, or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

Before entering on the duties of his office, each of the said commissioners shall take and subscribe to an oath or affirmation to support the constitution of the United States, and of this State, and to faithfully and honestly discharge the duties of such office of commissioner; and that he is not pecuniarily interested in any railroad in this State or elsewhere, as the same is defined in this Act, nor in the stocks, bonds, securities, earnings, or contracts thereof, and that he holds no other office of profit, nor any position under any political committee or party; which oath or affirmation shall be filed in the office of the Secretary of State.

Each of said commissioners shall also, before entering upon the duties of his office, execute a bond, payable to the State of Oregon, in the penal sum of $10,000, with sureties to be approved by the Governor, Secretary of State, and State Treasurer, or a majority of them, for the faithful discharge of his duties and office, which said bond, when so executed and approved, shall be filed in the office of the Secretary of State. Each of said commissioners shall receive an annual salary of four thousand dollars, payable in the same manner as salaries of other State officers are paid.

ORGANIZATION OF COMMISSION.

Section 3. The commissioners appointed under this Act shall, within twenty days after their appointment, meet at the State capitol and organize by electing one of their number chairman, who shall serve until the commissioner to be elected in the year 1908 shall have qualified and taken office. Immediately after the commissioner or commissioners, elected in the year 1908, and biennially thereafter, shall have qualified and taken office, the commissioners shall meet at the office of the commission and elect a chairman, who shall serve for two years, and until his successor is elected.

QUORUM.

Section 4. A majority of the said commissioners shall constitute a quorum to transact business, and the act or decision of a majority shall be deemed the act or decision of the commission. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission.

SECRETARY, CLERICAL ASSISTANCE AND EXPERTS.

Section 5. Said commission shall appoint a secretary at a salary of not more than two thousand dollars per annum, and may appoint an expert stenographer who shall receive an annual salary not exceeding twelve hundred dollars, and may employ such other expert help as may be necessary to perform any service it may require of them, and shall fix their compensation.

OATH OF SECRETARY—DUTIES—QUALIFICATION.

Section 6. The secretary shall take and subscribe to an oath similar to that of the commissioners, and shall keep full and correct records of all transactions and proceedings of the commission, and shall perform such other duties as may be required by the commission. Any person ineligible to the office of commissioner shall be ineligible to the office of secretary.

NAME OF COMMISSION—POWER TO SUE AND BE SUED—SEAL—AUTHENTICATION OF RECORDS—MEANING OF WORD COMMISSION AS USED IN ACT.

Section 7. The commissioners shall be known collectively as "Railroad Commission of Oregon," and in that name may sue and be sued. The commission shall have a seal with the words "Railroad Commission of Oregon," and such other design as it may prescribe, engraved thereon, by which it shall authenticate its proceedings and of which the courts shall take judicial notice. Whenever the word commission is used in this Act, it shall be taken to mean "Railroad Commission of Oregon."

OFFICE, SUPPLIES, SESSIONS HELD ELSEWHERE THAN CAPITOL—ALLOWANCE FOR TRAVELING EXPENSES.

Section 8. The commission shall keep its office at the Capitol and shall be provided by the Secretary of State with suitable room or rooms, necessary office furniture, supplies, stationery, books, periodicals, maps, and all necessary expenses therefor shall be audited and paid as other State expenses are audited and paid. The commission may hold sessions at any place other than the Capitol when convenience of the parties so requires. The commissioners, secretary, and clerk, and such experts as may be employed, shall be entitled to receive from the State their actual necessary expenses while travelling on the business of the commission. Such expenditures to be sworn to by the person who incurred the expense and approved by the commission.

RULES—ALL HEARINGS TO BE OPEN.

Section 9. The commission shall have power to adopt and publish rules or orders to govern its proceedings and to amend the same, and to regulate the mode and manner of all investigations and hearings of railroads and other parties before it, and all hearings shall be open to the public. Any person may appear before the commission, and be heard, or may appear by attorney.

CONFERENCE BY CORRESPONDENCE OR CONVENTIONS WITH OTHER COMMISSIONS.

Section 10. The commission may confer by correspondence, or by attending conventions, or otherwise, with the railroad commissioners of other states, and with the Interstate Commerce Commission, on any matters relating to railroads.

WHAT EMBRACED IN TERM "RAILROAD"—WHAT TRANSPORTATION GOVERNED BY ACT.

Section 11. The term "railroad" as used herein shall mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers (appointed by any court whatsoever), that now, or may hereafter, own, operate by steam, electric or other motive power, manage or control, any railroad or interurban railroad or part of a railroad or interurban railroad as a common carrier in this State, or cars or other equipment used thereon, or bridges, terminals, or sidetracks, used in connection therewith, whether owned or operated under a contract, agreement or lease or otherwise. The term "railroad" whenever used herein shall also mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers (appointed by any court whatsoever), engaged in the ownership, management or control of union depots or terminals in this State (which

corporations, companies, individuals and associations are hereby declared to be common carriers), or the transportation of property within this State by express; and all duties required of and penalties imposed upon any railroad or any officer or agent thereof shall, in so far as the same are applicable, be required of and imposed upon express, union depot and terminal companies, and their officers and agents, and the commission shall have the power of supervision and control of union depot, terminal and express companies to the same extent as railroads.

The provisions of this Act shall apply to the transportation of passengers and property, and to the receiving, delivering, switching, storing, elevation and transfer in transit, ventilation, refrigeration or icing, and handling of such property, and to all charges connected therewith; and shall apply to all railroad companies, union depot companies, terminal companies, car companies, oil companies, tank line companies, sleeping car companies, freight and freight line companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon or over any line of railroad within this State, and to any common carrier engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water.

This Act shall not apply to the transportation of passengers being carried solely within the limits of cities by street and other railroads, and shall not apply to logging or other private railroads not doing business as common carriers.

REASONABLY ADEQUATE SERVICE, EQUIPMENT AND FACILITIES EXACTED—CHARGES TO BE REASONABLE AND JUST.

Section 12. Every such railroad is hereby required to furnish reasonably adequate service, equipment and facilities, and the charges made for any service rendered or to be rendered in the transportation of passengers or property or for any service in connection therewith, or for the receiving, switching, delivering, storing, elevation, and transfer in transit, ventilation, refrigeration, or icing or handling of such property, or for union depot or terminal facilities, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SCHEDULE OF RATES AND JOINT RATES TO BE PRINTED AND KEPT ON FILE.

Section 13. Every railroad shall print in plain type and file with the commission within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, fares and charges for the transportation of passengers and property, or use of union depot and terminals, and any service in connection therewith, which it has established and which are in force at the time between all points in this State upon its line, or any line controlled or operated by it, and the rates, fares and charges shown on such schedules which are to take effect prior to April 1st, 1907,

shall not exceed the rates, fares and charges shown on the schedules filed under the provisions of section 62 of this Act. The schedules printed as aforesaid shall plainly state the places upon its line or any line controlled or operated by it in this State between which passengers and property will be carried, and there shall be filed therewith the classification of freight in force. Every railroad shall publish with and as a part of such schedules all rules and regulations that in any manner affect the rates charged or to be charged for the transportation of passengers or property, also the charges for delay in loading or unloading cars, for track and car service or rental and for demurrage, switching, terminal or transfer service, or for rendering any other service in connection with the transportation of persons or property. Two copies of said schedules for the use of the public shall be filed and kept on file in every depot, station and office of such railroad where an agent is maintained, which schedules shall be in such form and place as to be accessible to the public and can be conveniently inspected. When passengers or property are transported over connecting lines in this State operated by more than one railroad, and the several railroads operating such lines establish joint rates, fares and charges, a schedule of joint rates shall also in like manner be printed and filed with the commission and kept on file in every depot, station and office of such railroad where an agent is maintained.

CHANGES IN SCHEDULE ONLY ON NOTICE—FILING NEW COPIES PRIOR TO CHANGE.

Section 14. No change shall be made in any schedule, including schedule of joint rates, or in any classification, except upon ten days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; *provided,* that the commission, upon application of any railroad, may prescribe a less time in which a reduction may be made. Copies of all new schedules shall be filed as hereinbefore provided in every depot, station and office of such railroad, ten days prior to the time the same are to take effect unless the commission shall prescribe a less time.

CHANGES IN SCHEDULE OF JOINT RATES—POSTING NOTICE.

Section 15. Whenever a change is made in any existing schedule including schedule or [of] joint rates, a notice shall be posted and kept posted by the railroad in a conspicuous place in every depot, station and office where an agent is maintained, stating what changes have been made in the schedules on file, specifying the class or commodity affected and the date when the same will take effect.

UNLAWFUL TO TAKE OTHER COMPENSATION FOR TRANSPORTATION OF PASSENGERS OR PROPERTY THAN SPECIFIED IN SCHEDULES.

Section 16. It shall be unlawful for any railroad to charge, demand, collect or receive a greater or less compensation for the transportation of passengers or property or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, and the rates, fares and charges named therein shall be the lawful rates, fares and charges until the same are changed as herein provided.

COMMISSION MAY PRESCRIBE CHANGES IN FORM OF SCHEDULE.

Section 17. The commission may prescribe such changes in the form in which the schedules are issued by the railroad as may be found expedient.

JOINT RATES TO BE REASONABLE AND JUST.

Section 18. Whenever passengers or property are transported over two or more connecting lines of railroad between points in this State, and the railroad companies have made joint rates for the transportation of the same, such rates and all charges in connection therewith shall be just and reasonable, and every unjust and unreasonable charge is prohibited and declared to be unlawful; *provided,* that a less charge by each of said railroads for its proportion of such joint rate than is made locally between the same points on their respective lines shall not for that reason be construed as a violation of the provisions of this Act, nor render such railroads liable to any of the penalties hereof.

CONCENTRATION, COMMODITY, TRANSIT AND SPECIAL CONTRACT RATES PERMITTED—TO BE OPEN TO PUBLIC AND REGULATED BY COMMISSION.

Section 19. Nothing in this Act shall be construed to prevent concentration, commodity, transit, and other special contract rates, but all such rates shall be open to all shippers for a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this Act as to the printing and filing of the same; *provided,* all such rates shall be under the supervision and regulation of the commission.

BUT ONE UNIFORM CLASSIFICATION OF FREIGHT.

Section 20. There shall be but one classification of freight in the State, which shall be uniform on all railroads.

PERMISSIBLE FREE OR REDUCED TRANSPORTATION OF FREIGHT OR PASSENGERS.

Section 21. Nothing herein shall prevent the carriage, storage or handling of freight free or [at] reduced rates for the United States, the State, or any municipality thereof, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or household goods the property of railway employees, or commodities shipped by employees for their own exclusive use or consumption; or the issuance of mileage, commutation, party or excursion passengers' tickets, provided the same shall be obtainable by all persons applying therefor under like circumstances and conditions, or the sale of such tickets as were usually and customarily sold at reduced rates prior to January 1, 1907, provided the same are sold without discrimination to all persons applying therefor under like circumstances and conditions. This Act shall not be construed as preventing railroads from giving free transportation, or reduced rates therefor, to its officers, agents, surgeons, physicians, employees and attorneys at law, or members of their families, or to former railroad employees or members of their families, where such employees have become disabled in the railway service, or are unable from physical disqualifiation to continue in the service, or to members of families of deceased railroad employees; or State and district officers of the State of Oregon and county judges and sheriffs of the various counties of the State of Oregon in cases where the same is now or may hereafter be required by law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, and charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work, to officers or agents of incorporated colleges, to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National homes or State homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to officers of the United States Reclamation Service; to United States Livestock Inspectors; to railroad mail service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the railroad is interested, persons injured in wrecks and physicians and nurses attending such persons; nor shall this Act be construed to prevent the interchange of passes for the officers, agents, or employees of common carriers and their families, nor to prevent any railroad from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation. Upon any shipment of livestock, poultry, fruit or other property of such nature as to require the care of an attendant, the railroad may furnish to the shipper or some person or persons designated by him free transportation

for such purpose, including return passes to the point at which the shipment originated; *provided*, there shall be no discrimination in reference thereto between such shippers, and the commission shall have power to prescribe regulations in relations thereto.

ADEQUATE AND SUITABLE DEPOTS, BUILDINGS, SWITCHES, SPURS, AND SIDETRACKS TO BE PROVIDED AND MAINTAINED.

Section 22. It shall be the duty of every railroad to provide and maintain adequate depots and depot buildings, and clean and suitable toilet rooms, or buildings, at its regular stations where an agent is maintained, for the accommodation of passengers, and said depot buildings shall be kept clean, well lighted and warmed, for the comfort and accommodation of the traveling public. All railroads shall keep and maintain adequate and suitable freight depots, buildings, switches, spurs and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroads. The commission shall also, from time to time, and as often as once each year, carefully examine and inspect the physical condition of each railroad in the State, its roadbed, stations, equipment, and the manner of its conduct and management with reference to the safety of the public, and the employees of such railroad, and the convenience of the public, and shall report the result of its investigations to the railroad company, together with its recommendations thereon; *provided*, that this section shall not be construed as repealing any existing law on the subject.

STATION HOUSES AT CROSSINGS MAINTAINED AT JOINT EXPENSE—CONNECTING TRACKS.

Section 23. All railroads shall, at all points of connection, crossings or intersection with the roads of other railroads, unite therewith in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other; and for the transfer of passengers, baggage or freight, whenever the same shall be ordered by the railroad commission; and shall, when ordered by it, keep such depot or passenger house warmed, lighted, and opened a reasonable time before the arrival, and until after the departure, of all trains carrying passengers; and said railroads shall stop all trains at said depots for the transfer of passengers, baggage and freight when so ordered by the commission. Such railroads whose roads so connect or intersect shall, when ordered by the commission, so unite and connect the tracks of the several roads as to permit the transfer of cars from the track of one to that of the other. The expense of constructing and maintaining such station houses, platforms and track connections, shall be paid by such railroads in such proportions as may be fixed by the commission, in the event such railroads do not agree between themselves as to the apportionment thereof.

PENALTY FOR VIOLATION OF PRECEDING SECTION.

Section 24. Any railroad which, after having received ninety days' notice from the commissioners, shall neglect or refuse to comply with the provisions of the preceding section shall, for every day it fails, neglects, or refuses to comply therewith, forfeit and pay the sum of twenty-five dollars, which may be recovered in the name of the State in an action brought in the circuit court of the State of Oregon in the county wherein such crossing or intersection is situated.

RAILWAY CROSSINGS—COMMISSION TO REGULATE—ASCERTAINMENT OF DAMAGES; COMMISSION MAY ORDER INTER-LOCKING DEVICES—PENALTY.

Section 25. Whenever it becomes necessary for the track of one railroad to cross the track of another railroad, it shall be the duty of the commission to ascertain and define upon complaint or its own motion and on notice, in the manner provided in Section 28 of this Act, the mode of such crossing which shall occasion the least probable injury upon the safety, welfare and interests of the public and the rights of the company owning the road which is intended to be crossed. The commission shall also determine the compensation to be paid by the railroad so seeking to cross the other, if such railroads are unable to agree thereon, and the points and manner of such connection. If it shall appear to the commission that it is reasonable and practicable to avoid a grade crossing, the commission shall by its order prevent the same, and shall prescribe the manner of such crossing.

In case any railroad shall hereafter seek to cross at grade with its track or tracks the track or tracks of another railroad, the railroad seeking to cross at grade shall be compelled to pay all damages caused by such crossing, and to interlock or protect such crossing by safety devices to be designated by the commission, and to pay all costs of appliances, together with the expenses of putting them in and maintaining them; *provided*, that this requirement shall not apply to crossings of sidetracks.

In any case where the tracks of two or more railroads cross each other at a common grade in this State, it shall be the duty of such railroads, when ordered by the commission upon complaint or its own motion, upon notice, in the manner provided in Section 28 hereof, to protect such crossings by interlocking or other safety devices, under regulations to be designated by the commission, to prevent trains colliding at such crossings. The commission in making such order shall designate the manner of such interlocking protection, and shall apportion the cost of installing and maintaining the same between the several railroads, if such railroads are unable to agree upon the same between themselves.

Any company, corporation, receiver or person operating any railroad who shall refuse or neglect to comply with any order made by the said commission in pursuance of the terms of this section shall

forfeit and pay to the State of Oregon a penal sum of five hundred dollars per week for each week of such refusal and neglect, which said sum may be recovered in an action or actions to be brought in the name of the State of Oregon.

So much of the provisions of Section 5095 of the Codes and Statutes of Oregon, compiled and annotated by Hon. Charles B. Bellinger and William W. Cotton, as may be in conflict with this section, is hereby repealed.

HOW AND WHEN CARS SHALL BE FURNISHED—PENALTIES FOR FAILURE TO FURNISH, LOAD AND UNLOAD—POWER OF COMMISSION TO PRESCRIBE RULES.

Section 26. In furnishing cars no discrimination shall be made in favor of any person or place, or any commodity except livestock and perishable property.

When the owner, manager, or shipper of freight of any kind shall make written application to the railroad to supply cars to be loaded in carload lots with freight of which said railroad is a common carrier, it shall be the duty of such railroad to supply cars so applied for within the time herein prescribed. If the application be for five cars or less, the number of cars applied for shall be furnished to the applicant within five days; if the application be for more than five cars and not to exceed ten cars, the number of cars applied for shall be furnished to the applicant within ten days; if the application be for more than ten cars and less than thirty cars, the number of cars applied for shall be furnished to the applicant within fifteen days; if the application be for thirty or more cars, the number of cars applied for shall be furnished to the applicant within twenty days. Said cars shall be suitable for the purpose for which they are ordered, and shall be furnished at a convenient place for loading, at the point where required by the owner, manager or shipper making application therefor.

Any such application must be made to the railroad upon whose line of railroad the shipment originates. Every such application shall state the number of cars wanted, the time when and place where desired, the kind of freight to be shipped and the final destination thereof. The place where said cars are desired to be loaded for shipment shall be at some station, switch or siding on the line of the railroad to which application is made. The application for cars may be made to any officer or general agent of the railroad required to furnish the same, or to an agent of the railroad at the point nearest the station, switch or siding where said cars are to be furnished.

The time herein stated for the delivery of cars mentioned in any such application shall begin to run from the hour of seven o'clock A. M. of the next day following the day of the receipt of any such application by the railroad to which it is given.

When a car or cars are applied for under the provisions of this Act, and are not furnished within the time as herein required,

the railroad so failing to furnish such car or cars shall be liable and held to be immediately indebted to the person making application therefor in the sum of two dollars per day or fraction of a day per car applied for and not furnished within the limit of time and as herein prescribed, until such car or cars are furnished. And in addition thereto, any such defaulting railroad shall be held liable and held to be indebted to the person making such application and not receiving the car or cars therein applied for, within the time and as herein required, in the amount of the actual damages, any such applicant may sustain, except as in this section of this Act stated.

Each and every applicant shall fully load and have ready for shipment, the car or cars applied for by him within forty-eight (48) hours after such car or cars have been furnished by the railroad at the point designated in his application therefor; and upon failure so to do, he shall forfeit and pay, upon demand, to the railroad furnishing the same, the sum of two dollars per day, or fraction of a day, after the expiration of said time for loading for each car not loaded and ready for shipment as aforesaid; *provided*, that where applications are made on several days, and more cars than are mentioned in one application are furnished on the same day, the applicant shall have forty-eight (48) hours to load the car or cars furnished on the first application, and another forty-eight (48) hours to load the car or cars furnished on the next application, and so on; and the penalty prescribed shall not accrue as to any car or lot of cars applied for, on any one day, until the period within which they may be loaded has expired. The time within which said cars are to be loaded shall begin to run from the hour of 7 o'clock A. M. of the day next following the day the same are furnished at the place required and at the time specified in the application therefor. If the said applicant shall not use such cars so ordered by him he shall so notify the railroad furnishing the same, and he shall be liable for the penalty above set forth to the railroad furnishing the same for a period of one day after said notification.

When cars have been furnished and loaded it shall be the duty of the railroad company to promptly remove the same from the point where loaded and to deliver the same to the connecting railroad or to the person or persons to whom they are consigned, within a reasonable time. All persons to whom cars are consigned shall unload the same within forty-eight (48) hours after delivery thereof to the said consignee at the usual and appropriate point for unloading; and upon failure to unload said car or cars within the time herein specified, after the delivery thereof as herein stated, the consignee thereof shall be liable and shall be held to be immediately indebted to the railroad delivering said cars, in the sum of two dollars per day, or fraction of a day, for each car so left unloaded. The time for unloading such cars shall be computed in the manner hereinbefore prescribed for loading cars.

When any action against any railroad is brought under the provisions of this Act for failure to furnish cars, it shall be shown on the trial thereof by competent testimony that the person apply-

ing therefor had on hand at the time it became the duty of the railroad under any application so made to furnish the car or cars required, the kind of freight specified in the application ready for shipment in the said car or cars, to the point of final destination in said application stated.

No charge for failure of any railroad to furnish a car or cars as herein required shall be made or enforced, or damages therefor claimed, when such failure is caused by public calamity, strikes, washouts, acts of God, the public enemy, mobs, riots, wrecks, fires, or accidents; but the lack of sufficient motive power, cars, equipment, other appliances, terminal facilities, roadbed, facilities for maintenance, repair or transportation, or any thereof, shall not be held to excuse the failure to furnish cars as herein required, or to exonerate any railroad from the payment of the damages and penalties herein prescribed, except during the times when the Railroad Commission of Oregon shall by order suspend the operation of those portions of this section of this Act, requiring the furnishing of cars as herein stated, and then only during the time of such suspension. The causes in this Act enumerated, which afford an excuse on the part of a railroad for not furnishing the cars as required, shall likewise, and to the same extent, excuse the owner, manager, or shipper or consignee of any freight from all liability hereunder for failure to load or unload cars as herein required.

The Railroad Commission of Oregon shall have and is hereby granted in power to suspend the operation of the provisions of this section of this Act or any thereof for continuous periods of not exceeding thirty days each.

The operation of this section of this Act, either in whole or in part, shall not be suspended by said commission except upon good cause shown. Any railroad may, from time to time, make written application to the said commission to suspend the operation of this section of this Act, in so far as it makes railroads liable for penalties or damages. When any such application is made by a railroad the commission shall publish a notice thereof in a daily newspaper of general circulation published in Salem, Oregon, and a like newspaper published in Portland, Oregon, once a day for not less than ten days immediately preceding the time fixed for any such hearing. Such notice shall state the nature of the inquiry to be instituted, and the time when, and the place where, the same will be held.

Any owner, shipper, or manager of any freight, or any consignee thereof, may, from time to time, make written application to the said commission to suspend the operation of this section of this Act, in so far as it makes them or any of them liable for penalties or damages. When any such application is made by any such person the commission shall summon the railroad or railroads doing business in Oregon, and interested in any such application, to appear and make such representations as may be desired. Said summons shall be served by the sheriff of the county in which the inquiry is to be carried on, not less than ten days immediately preceding the date set for any such hearing, and service thereof

upon any agent of a railroad shall be deemed to be service on the railroad of which he is an agent. When any such application is made by a railroad or any person herein authorized to do so, the commission shall inquire into the matter stated therein and ascertain the cause of the failure to deliver cars as ordered, or the failure to load or unload the same as the case may be.

Any railroad, and any owner, shipper, or manager of any freight, or any consignee thereof, or any person interested, shall have the right to appear in any such proceedings before said commission, however instituted, to participate therein, to introduce testimony and to be heard and represented in person and by counsel.

The said commission shall proceed expeditiously to hear and determine any such proceedings and upon proper cause shown, may by order suspend the operation of the portion of this section of this Act referred to in any such application and desired to be suspended by the railroad or person making the application for a continuous period of not to exceed thirty days. Thereafter no further suspension of the operation of this section of this Act or any portion thereof shall be ordered by the commission except upon another application, notice and hearing as aforesaid. Any such order of suspension may take effect retroactively when so pronounced in the order itself.

Any claim which any person may have against any railroad, for failure to furnish cars or for damages sustained by reason thereof, shall be assignable in the same manner, and to the same extent, as any assignable claim or chose in action, and suit or action for the collection thereof may be brought against any railroad by any person having any such claim, or by the assignee thereof.

The commission shall have the power to make, establish, and alter, either on its own motion or upon complaint, in the manner provided in section 28 hereof, reasonable regulations and rules, not inconsistent with the provisions of this section, for the delivering, switching, weighing, loading and unloading of cars, and to enforce the same.

Nothing in any other section of this Act contained shall be so construed as to impair or to detract from the provisions of this section of this Act.

If the provisions of this section 26 of this Act, or any part thereof, shall be declared invalid by the final judgment or decree of any court, then, and only to the extent that the provisions of this section shall have been so declared invalid, shall the Railroad Commission of Oregon have power, and in the contingency aforesaid the power to said commission is hereby given, and the said commission is, in said event, charged with the duty to prescribe and enforce reasonable orders, rules and regulations for the furnishing of suitable cars to any and all persons applying therefor for the transportation of all kinds of freight in carload lots of which the railroad to whom the application is made is a common carrier; the time within which the same shall be furnished; the manner of the application therefor; the time for the loading and transportation and of the unloading thereof, for demurrage and reciprocal

demurrage; and generally such rules and regulations as may be designed to require reasonable promptness in furnishing cars to be loaded to persons making application therefor, and the loading thereof by applicants therefor, and the unloading by the consignee and the reasonably prompt transportation thereof. Any railroad failing, neglecting or refusing to furnish suitable cars, when applied for in conformity with the reasonable orders, rules and regulations prescribed by said commission, and within the time therein stated, shall be held to be immediately indebted and liable to pay such applicant the sum of two dollars for each car so applied for, for each day during which such railroad fails, neglects or refuses to furnish the same, and in addition thereto all damages actually sustained by reason of said car or cars not being so furnished, and said claims for penalties and damages shall be assignable as hereinbefore stated.

Any person making any such application for car or cars, who shall fail, neglect or refuse to load any such car or cars, within the time so prescribed, shall be liable and held to be immediately indebted to the railroad furnishing the same in the said sum of two dollars for each car so furnished for each day during which the applicant therefor shall fail, refuse, or neglect to load the same; and if any such car is not loaded at all, the applicant therefor shall notify the railroad furnishing the same of his intention not to load said car, and he shall be liable for the penalty above set out to the railroad furnishing the same for the period of one day after such notification. Railroads shall have six months from the date of the passage of this Act within which to comply with the provisions of this Section 26 hereof.

INTERCHANGE OF TRAFFIC—CARS TO BE FORWARDED WITHOUT DISCRIMINATION—PRECEDENCE ALLOWED LIVESTOCK AND PERISHABLE FREIGHT—PRIVATE TRACKS CONTROLLED.

Section 27. All railroads shall afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines for forwarding and delivering passengers and property, and shall transfer, switch for a reasonable compensation, and deliver without discrimination or unreasonable delay any freight or cars, loaded or empty, destined to any point on its track or any connection lines; *provided,* that precedence over other freight shall be given to livestock and perishable freight.

The commission shall have control over private tracks in so far as the same are used by common carriers, in connection with any railroad for the transportation of freight, in all respects the same as though such tracks were a part of the track of said railroad.

MANNER OF INVESTIGATION OF COMPLAINTS—INVESTIGATION ON COMMISSION'S OWN MOTION—POWER TO ORDER CHANGES.

Section 28. Upon complaint of any person, firm, corporation or association, or of any mercantile, agricultural or manufacturing

society, or of any body politic or municipal organization, that any of the rates, fares, charges or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property, or any service in connection therewith, are in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commission may notify the railroad complained of that complaint has been made, and ten days after such notice has been given the commission may proceed to investigate the same as hereinafter provided. Before proceeding to make such investigation the commission shall give the railroad and the complainant ten days' notice of the time and place and when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. If upon such investigation the rate or rates, fares, charges or classifications, or any joint rate or rates, or any regulation, practice or service complained of shall be found to be unreasonable or unjustly discriminatory, or the service shall be found to be inadequate, the commission shall have power to fix and order substituted therefor such rate or rates, fares, charges or classification as it shall have determined to be just and reasonable and which shall be charged, imposed and followed in the future, and shall also have the power to make such orders respecting such regulations, practice or service as it shall have determined to be reasonable, and which shall be observed, followed, used and supplied in the future.

The commission may, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately, and at such times as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any service is inadequate, and that an investigation relating thereto should be made, it may on its own motion investigate the same. If after making such investigation, the commission becomes satisfied that sufficient grounds exist to warrant a hearing being ordered to determine whether the rate so investigated [is] unreasonable or unjustly discriminatory, or whether the service investigated is inadequate, it shall furnish the railroad or railroads interested a statement setting forth the rate or service investigated, which said statement shall be accompanied by a notice fixing a time and place for hearing on such rate or service, as the case may be. Notice may likewise be given to other parties in interest, and shall be given at least ten days in advance of any hearing, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint was filed with the commission relative to the matter investigated, pursuant to the provisions of this section, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

This section shall be construed to permit any railroad to make complaint with like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization.

Whenever a complaint is lodged with the railroad commission by the common council or mayor of any city, or any county judge or county commissioner or road supervisor, or by five or more freeholders and taxpayers in any town or road district to the effect that a public highway and a railroad cross one another in such city or road district at the same level, and that such grade crossing is unsafe and dangerous to travelers over such highway or railroad, it shall be the duty of said commission to give notice to the railroad in interest of the filing of such complaint, and to furnish a copy of the same to the railroad company, and order a hearing thereon in the manner provided for hearings in this section. If upon such hearing it shall appear to the satisfaction of the commission that the crossing complained of is unsafe and dangerous to human life, said commission may order and direct the railroad to erect gates at said crossing and place an employee in charge to open and close the same when an engine or train passes, or that a flagman be stationed at such crossing who shall display a flag when an engine or train is about to pass, or that such crossing shall be provided with an electric signal, or other suitable device as the commission determines the better security of human life and the public travel requires; and such railroad shall comply with the terms of such order.

COMMISSIONER EMPOWERED TO ADMINISTER OATHS, COMPEL ATTENDANCE OF WITNESSES AND PRODUCTION OF BOOKS AND PAPERS—PROCEEDINGS ON REFUSAL TO COMPLY WITH ORDER OR SUBPŒNA—WITNESS FEES—DEPOSITIONS—RECORD OF TESTIMONY KEPT.

Section 29. Each of the commissioners, for the purpose mentioned in this Act, shall have power to administer oaths, certify to official acts, issue subpœnas, compel the attendance of witnesses, and the production of papers, tariffs, waybills, contracts, books, accounts, documents and testimony. In case of disobedience on the part of any person or persons to comply with the order of the commission or any commissioner or any subpœna, or in the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the circuit court of any county, or the judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpœna issued from such court, or a refusal to testify therein. Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, waybills, contracts, books, accounts, and documents, if in his power to do so, in obedience to the subpœna or lawful requirement of the commission, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in

the county jail for not more than one year, or by both such fine and imprisonment.

Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the State in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the commission; *provided,* that no witness subpœnaed at the instance of parties other than the commission shall be entitled to compensation from the State for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated; *and provided,* that no witness shall be entitled to any witness fees or mileage who is an officer, agent, or employee of any railroad, when summoned at the instance of such railroad; and no witness furnished with free transportation shall receive pay for the distance he may have traveled upon such free transportation. The commission or any party may in any investigation cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts.

A full and complete record shall be kept of all proceedings had before the commission on any investigation had under section 28 of this Act, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission under the provisions of section 32 of this Act, the commission shall, before said suit is reached for trial, cause a certified transcript of all proceedings had and testimony taken upon such investigation to be filed with the county clerk of the county where the action is pending. A transcribed copy of the evidence and proceedings, or any specific part thereof on any investigation, taken by the stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript in long hand of all the testimony on the investigation, or of a particular witness, or of other specific parts thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if said evidence had been given and said proceedings had upon the trial in which said transcript or any part thereof is offered. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation.

SUBSTITUTION AND ENFORCEMENT OF RATES, CHARGES, CLASSIFICATIONS, JOINT RATES, REGULATIONS, SERVICE, OR EQUIPMENT, AND APPORTIONMENT OF RATES. ESTABLISHMENT OF JOINT RATE ROUTES.

Section 30. Whenever, upon an investigation made under the provisions of this Act, the commission shall find any existing rate or rates, fares, charges, or classifications, or any joint rate or rates, or any regulation or practice whatsoever affecting the transportation

of persons or property, or any service in connection therewith, are unreasonable or unjustly discriminatory, or any service is inadequate, it shall determine and by order fix a reasonable rate, fare, charge, classification, or joint rate to be imposed, observed, and followed in the future in lieu of that found to be unreasonable or unjustly discriminatory, or inadequate, as the case may be, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the railroad affected thereby, which order shall of its own force take effect and become operative twenty days after the service thereof. All railroads to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any railroad in any such rates, fares, or charges, or in any joint rate, or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the railroads affected thereby in like manner, and the same shall take effect within such time thereafter as the commission shall prescribe.

The commission may at any time, upon notice to the railroad, and after opportunity to be heard as provided in section 28, rescind, alter or amend any order fixing any rate or rates, fares, charges, or classification, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders.

Whenever the rate ordered substituted by the commission shall be a joint rate or charge, and the railroads party thereto shall fail to agree upon the apportionment thereof within twenty days after the service of such order, the commission may, after a like hearing, issue a supplementary order declaring the apportionment of such joint rate or charge, and the same shall take effect of its own force as part of the original order.

Whenever the railroads shall refuse or neglect to establish a through route or joint rate or rates for the transportation of persons or property, the commission may, upon notice to the railroads and after opportunity to be heard as in section 28 of this Act provided, fix and establish such through route, joint rate or rates, and if the railroads party thereto shall fail to agree upon the apportionment of such joint rate or rates within twenty days after service of such order, the commission may, upon a like hearing, issue a supplementary order declaring the apportionment of such joint rate or rates, and the same shall take effect of its own force as part of the original order.

COMMISSION'S ORDERS IN FORCE AND PRIMA FACIE REASONABLE UNTIL JUDICIALLY FOUND OTHERWISE.

Section 31. All rates, fares, charges, classifications and joint rates fixed by the commission shall be in force and shall be *prima facie* lawful, and all regulations, practices, and service prescribed by the commission shall be in force and shall be *prima facie* reasonable, until finally found otherwise in an action brought for that purpose pursuant to the provisions of sections 32, 33, 34, and 35 of this Act.

PROCEEDINGS ON SUITS AGAINST SUBSTITUTED RATES.

Section 32. Any railroad or other person, persons or corporation interested in or affected by any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or service, being dissatisfied therewith, may commence a suit in the circuit court of Marion County against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order, is unlawful, or that any such regulation, practice or service prescribed or fixed in such order in unreasonable, in which suit a copy of the complaint shall be served with the summons as in civil actions. The commission shall serve and file its answer to said complaint within ten days after the service thereof, whereupon said suit shall be at issue and stand ready for trial upon ten days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in said court, and the circuit court shall always be deemed open for the trial thereof, and the same shall be tried and determined as a suit in equity.

In all trials under this section, and sections 33, 34, and 35 hereof, the burden of proof [shall] be upon the plaintiff to show by clear and satisfactory evidence that the order of the commission complained of is unlawful, or unreasonable, as the case may be.

INJUNCTION NOT TO ISSUE AGAINST COMMISSION'S ORDERS EXCEPT ON APPLICATION, NOTICE AND HEARING.

Section 33. No injunction shall issue suspending or staying any order of the commission except upon application to the circuit court or presiding judge thereof, notice to the commission, and hearing, and upon the giving of such bond or other security and upon such conditions as the court may require; and if such order of injunction suspends the order or requirement of the commission fixing rates, then the court shall require a bond with good and sufficient surety conditioned that the railroad or railroads applying for such injunction shall answer for all damages caused by the delay in the enforcement of the order of the commission and all penalties that would attach against the said railroad and all compensation for whatever sums for transportation service any person or corporation shall be compelled to pay in excess of the sums such person or corporation would have been compelled to pay if the order of the commission had not been suspended; and such bond shall cover the periods transpiring from time of the issuance of any such injunction until the final determination of the question litigated. The said bond shall be executed in favor of the Railroad Commission of Oregon for the benefit of whom it may concern and shall be enforceable by said commission or any person interested in an appropriate proceeding. Any person paying charges found to be excessive shall have a claim for the excess, whether paid under protest

or not, and unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such railroad, or such railroad and the sureties on such bond. Claims of persons for money collected in excess of the amount payable under the rate or rates established by the commission shall be assignable in the same manner as any chose in action. No appeal to the Supreme Court shall stay the operation of any order of the commission unless the circuit or Supreme Court shall so direct, and unless the railroad so appealing shall give a bond with like conditions and terms as that given on granting injunctions suspending an order of the commission fixing rates.

RESUBMISSION OF PROCEEDING TO COMMISSION WHEN EVIDENCE ON TRIAL DIFFERENT THAN THAT BEFORE COMMISSION.

Section 34. If, upon the trial of such suit, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or additional thereto, the court before proceeding to render judgment, unless the parties to such suit stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, fares, charges, classification, joint rate or rates, regulation, practice, service or equipment complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the suit shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment or decree shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

APPEAL TO SUPREME COURT.

Section 35. Either party to said suit, within sixty days after the entry of the judgment or decree of the circuit court, may appeal to the Supreme Court. Where an appeal is taken the cause shall, on the return of the papers to the Supreme Court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar, but shall have precedence over civil causes of a different nature pending in said court.

SERVICE OF PROCESS—PRACTICE AND RULES OF EVIDENCE.

Section 36. In all suits, actions and proceedings in court arising under this Act all processes shall be served, and the practice and rules of evidence shall be the same as in civil actions except as otherwise in this Act provided. Every sheriff or other officer empowered to execute civil processes shall execute any process issued under the provisions of this Act, and shall receive such compensation therefor as may be prescribed by law for similar services.

IMMUNITY TO WITNESS—WITNESSES NOT EXCUSED FROM TESTIFYING.

Section 37. No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any violation of the provisions of this Act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; *provided,* that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying; *and provided,* the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

CERTIFIED COPIES OF ORDERS TO BE FURNISHED—PRIMA FACIE EVIDENCE.

Section 38. Upon application of any person the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be *prima facie* evidence of the facts stated therein.

COMMISSION TO INQUIRE INTO MANAGEMENT OF BUSINESS OF RAILROADS—INFORMATION TO BE OBTAINED FROM RAILROADS.

Section 39. The commission shall have authority to inquire into the management of the business of all railroads, and shall keep itself informed as to the manner and method in which the same is conducted and shall have the right to obtain from any railroad all necessary information to enable the commission to perform the duties and carry out the objects for which it was created.

BLANKS TO BE PREPARED, FURNISHED TO AND ANSWERED BY RAILROADS—ANNUAL REPORTS REQUIRED.

Section 40. Every railroad subject to the provisions of this Act shall annually, on or before the fifteenth day of September, unless additional time be granted, file with the commission a report verified by such railroad, or by its president, vice-president, treasurer, comptroller, auditor, or receiver, managing partner, or agent, or owner, in such form as the commission may prescribe, covering the year ending June 30 next preceding, and showing in detail the amount of capital stock issued; the amount and manner of payment therefor; the dividends paid, the surplus fund, if any; the number of stockholders, the funded and floating debts, and the interest paid or due thereon; the cost and value of all the railroad's property, franchises and equipments; the number of employees and officers, and the salary and wages paid each class; the amounts expended for improvements, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all other sources; the operating and other expenses; the balance of profit or loss; and a complete exhibit of the financial operation of the year, with an annual balance sheet, the amount of land received as grants from the State and from the United States; the amount of such land sold and the average price received per acre; the amount unsold and its average appraised value per acre; information in regard to rates and regulations concerning fares and freights; agreements, arrangements, or contracts with express, telegraph, sleeping- and dining-car companies, fast freight lines, and other railroads and common carriers, and such other matters as the commission may require; and any such railroad failing to make such report shall forfeit to the State, for each day's default, one hundred dollars, to be recovered in a civil action in the name of the State of Oregon.

The commission shall cause to be prepared suitable blanks for the purposes designated in this Act, which shall conform as nearly as practicable to the forms prescribed by the Interstate Commerce Commission, and shall, when necessary, furnish such blanks to each railroad. Any railroad receiving from the commission any such blanks, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the proper officer of said railroad and returned to the commission at its office within the time fixed by the commission.

COMMISSIONERS OR PERSONS DESIGNATED TO HAVE ACCESS TO BOOKS AND PAPERS AND MAY EXAMINE RAILROAD OFFICERS, AGENTS OR EMPLOYEES.

Section 41. The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall,

upon demand, have the right to inspect the books and papers of any railroad and to examine under oath any officer, agent or employee of such railroad in relation to its business and affairs; *provided,* that any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection under the hand of the commissioner, or of the secretary, and under the seal of said commission.

BOOKS AND PAPERS TO BE PRODUCED BEFORE COMMISSION WHEN REQUIRED—VERIFIED COPIES.

Section 42. The commission may require, by order or subpœna, to be served on any railroad in the same manner that a summons is served in a civil action in the circuit court, the production within this State, at such time and place as it may designate, of any books, papers, or accounts kept by said railroad in any office or place without the State of Oregon, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction; any railroad failing or refusing to comply with any such order or subpœna shall for each day it shall so fail or refuse, forfeit and pay into the State treasury a sum of not less than one hundred dollars nor more than one thousand dollars.

UNIFORM SYSTEM OF ACCOUNTING.

Section 43. The railroad commission may, in its discretion, prescribe a uniform system of rendering accounts of business transacted in Oregon by all railroads within the meaning of section 11 of this Act. Said commission may also prescribe the manner in which such accounts may be kept, and the time within which such railroads shall adopt such system; *provided,* that all forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

COPIES OF CONTRACTS TO BE DELIVERED TO COMMISSION.

Section 44. Every railroad, whenever required by the commission, shall, within a time to be fixed by the commission, deliver to the commission for its use copies of all contracts which relate to the transportation of persons or property, or any service in connection therewith, made or entered into by it with any other railroad, car company, equipment company, express or other transportation company, or any shipper or shippers, or other person or persons doing business with it.

LIST OF PASSES TO BE FURNISHED TO COMMISSION ANNUALLY.

Section 45. Every railroad shall, on the first Monday in February in each year, and oftener if required by the commission, file with the commission a verified list of all railroad tickets, passes and

mileage books issued free or for other than actual bona fide money consideration at full established rates during the preceding year, together with the names of the recipients thereof, the amounts received therefor, mileage thereof, and the reasons for issuing the same. This provision shall not apply to the sale of tickets at reduced rates open to the public, nor to tickets, passes or mileage books issued to persons not residents of this State, nor to tickets, passes or mileage books issued prior to the passage of this Act.

ANNUAL REPORT—COMMISSION TO ASCERTAIN COST OF CONSTRUCTION AND REPLACEMENT—INDEBTEDNESS AND DISPOSITION OF PROCEEDS THEREOF—GROSS AND NET INCOME—SALARIES AND WAGES—HOURS OF SERVICE.

Section 46. The commission shall report to the Governor annually on or before December 15th, or at any other times required by him, their doings for the preceding year, with such facts, statements and explanations as will show the actual workings of the system of railroad transportation of the State, its bearings on the business and prosperity of the people, and such suggestions relative thereto as it shall deem proper. It shall also recommend to the Governor any amendment of the railroad laws which it shall deem advisable, and, when directed by the Governor, shall investigate any matter subject to its supervision and report thereon. All such reports shall be transmitted to the Legislative Assembly by the Governor as soon as practicable.

The commission shall ascertain from time to time as nearly as practicable, the amount of money expended in the construction and equipment of every railroad, the amount of money expended to procure the right of way, also the amount of money it would require to secure the right of way, reconstruct the roadbed, track, depots and other facilities for transportation, and to replace all the physical properties belonging to the railroad. It shall ascertain the outstanding bonds, debentures and indebtedness and the amounts respectively thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the railroad, the credits due the railroad, other property on hand belonging to it, the judicial or other sales of said road, its property or franchises and the amounts purporting to have been paid and in what manner paid therefor, the commission shall also ascertain the gross and net income of the railroad from all sources in detail; the amount paid for salaries to the officers of the road, and the wages paid to its employees and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained, it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any State board or officer.

INVESTIGATION OF INTERSTATE RATES—PROCEEDINGS BEFORE INTERSTATE COMMERCE COMMISSION.

Section 47. The commission shall have power, and it is hereby made its duty to investigate all freight rates on interstate traffic on railroads in this State, and when the same are, in the opinion of the commission, excessive or discriminatory or are levied or laid in violation of the interstate commerce law, or in conflict with the rulings, orders or regulations of the Interstate Commerce Commission, the commission shall present the facts to the railroad, with a request to make such changes as the commission may advise, and if such changes are not made within a reasonable time the commission shall apply by petition to the Interstate Commerce Commission for relief. All freight tariffs issued by any such railroad relating to interstate traffic in this State shall be filed in the office of the commission within thirty days after the passage and publication of this Act, and all such tariffs thereafter issued shall be filed with the commission when issued.

DISCRIMINATION AND REBATES FORBIDDEN.

Section 48. If any railroad or any agent or officer thereof, shall directly or indirectly, by any special rate, rebate, drawback or by means of false billing, false classification, false weighing or by any other device whatsoever, charge, demand, collect, or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it for the transportation of persons or property or for any service in connection therewith, than that prescribed in the published tariffs then in force, or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation for a like and contemporaneous service, such railroads shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful, and upon conviction thereof shall forfeit and pay into the State treasury not less than one hundred dollars nor more than ten thousand dollars for each offense; and any agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than one thousand dollars for each such offense.

It shall be unlawful for any railroad to demand, charge, collect, or receive from any person, firm or corporation a less compensation for the transportation of property or for any service rendered or to be rendered by said railroad, in consideration of said person, firm or corporation furnishing any part of the facilities incident thereto; *provided,* nothing herein shall be construed as prohibiting any railroad from renting any facilities incident to transportation and paying a reasonable rental thereof.

PREFERENCES PROHIBITED.

Section 49. If any railroad shall make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or shall subject any particular person, firm or corporation, or particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such railroad shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful; *provided,* this section shall not prohibit any railroad from giving necessary preference to livestock and perishable freight over other freight.

UNLAWFUL TO ACCEPT REBATES.

Section 50. It shall be unlawful for any person, firm, or corporation knowingly to accept or receive any rebate, concession or discrimination in respect to transportation of any passenger or property wholly within this State, or for any service in connection therewith, whereby any such property shall, by any device whatsoever be transported at a less rate than that named in the published tariffs in force as provided herein, or whereby any service or advantage is received other than is therein specified. Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars for each offense.

TREBLE DAMAGES TO INJURED PERSONS—ATTORNEY'S FEES.

Section 51. If any railroad shall do or cause to be done or permit to be done any matter, act or thing in this Act prohibited, or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such railroad shall be liable to the person, firm, or corporation injured thereby in treble the amount of damages sustained in consequence of such violation together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case; *provided,* that any recovery as in this section provided, shall in no manner affect a recovery by the State of the penalty prescribed for such violation, and that the damages provided in section 26 hereof, awarded the aggrieved party by reason of cars not being furnished when applied for shall be in lieu of the treble damages awarded by this section.

PENALTY FOR VIOLATION BY OFFICERS, AGENTS OR EMPLOYEES.

Section 52. Any officer, agent or employee of any railroad who shall fail or willfully refuse to fill out and return any blanks as required by this Act, or shall fail or refuse to answer any questions

therein propounded, or shall knowingly or willfully give a false answer to any such question, or shall evade the answer to any such question, where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or willfully refuse to exhibit to the commission or any commissioner, or any person authorized to examine the same, any book, paper or account of such railroad, which is in his possession or under his control, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each such offense; and a penalty of not less than five hundred dollars nor more than one thousand dollars, shall be recovered from the railroad for each such offense when such officer, agent or employee acted in obedience to the direction, instruction or request of such railroad or any general officer thereof.

GENERAL PROVISION FOR PENALTY FOR VIOLATION BY RAILROADS.

Section 53. If any railroad shall violate any provision of this Act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement, order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure or refusal, such railroad shall forfeit and pay into the State treasury a sum of not less than one hundred dollars, nor more than ten thousand dollars for such offense. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent, or other person acting for or employed by any railroad, acting within the scope of his employment, shall in every case be deemed to be the act, omission or failure of such railroad.

All penalties, fines or forfeitures, or other sums collected or paid, under the provisions of this Act, shall be paid into the general fund of the State treasury, except where it is provided the same shall be paid to the aggrieved party.

EMERGENCY RATES PERMITTED ON ORDER OF COMMISSION.

Section 54. The commission shall have power when deemed by it necessary to prevent injury to the business or interests of the people or railroads of this State in consequence of interstate rate wars, or in case of any other emergency to be judged of by the commission to temporarily alter, amend, or, with the consent of the railroad company concerned, suspend any existing passenger rates, freight rates, schedules and orders of any railroad or part of railroad in this State. Such rates so made by the commission shall apply on one or more of the railroads in this State or any portion thereof as may be directed by the commission, and shall take effect at such time and remain in force for such length of time as may be prescribed by the commission.

RATES, CHARGES, AND PRACTICES NOT SPECIFICALLY DESIGNATED MAY BE PRESCRIBED.

Section 55. Whenever, after hearing and investigation as provided by this Act, the commission shall find that any charge, regulation, or practice affecting the transportation of passengers or property, or any service in connection therewith, not hereinbefore specifically designated, is unreasonable or unjustly discriminatory, it shall have the power to regulate the same as provided in sections 28 and 30 of this Act.

ACCIDENTS TO BE REPORTED—INVESTIGATION BY COMMISSION.

Section 56. Every railroad shall, whenever an accident attended with loss of human life or limb, or with serious injury to person or property, occurs within this State upon its line of road or on its depot grounds or yards, give immediate notice thereof to the commission, stating the particulars thereof; *provided,* that neither said report nor any part thereof shall be used as evidence or used for any purpose against such railroad so making such report in any suit or action for damages growing out of any matter mentioned in said report. In the event of any such accident the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith, which investigation shall be held in the locality of the accident, unless, for greater convenience of those concerned, it shall order such investigation to be held at some other place, and said investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall seasonably notify an officer or station agent of the company of the time and place of the investigation. The cost of such investigation shall be certified by the commission and the same shall be audited and paid by the State in the same manner as other expenses are audited and paid.

INQUIRY INTO VIOLATIONS OF RAILROAD LAWS—INSTITUTION OF PROCEEDINGS FOR ENFORCEMENT OF LAWS—WHERE FORFEITURES RECOVERABLE.

Section 57. The commission shall inquire into any neglect or violation of the laws of this State by any railroad corporation doing business therein, or by the officers, agent, or employees thereof, or by any person operating a railroad, and shall have the power, and it shall be its duty, to enforce the provisions of this Act as well as all other laws relating to railroads and report all violations thereof to the Attorney-General; upon the request of the commission it shall be the duty of the Attorney-General or the prosecuting attorney of the proper county to aid in any investigation, hearing, or trial had under the provisions of this Act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this Act or the recovery of penalties payable to the State, and of all other laws of this State relating to railroads, and for the punishment of

all violations thereof. Any forfeiture or penalty herein provided shall be recovered by an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction. The commission shall have authority to employ special counsel in any proceeding, investigation, hearing or trial, and to fix their compensation.

INVESTIGATION OF CLAIMS AGAINST RAILROADS.

Section 58. All claims against any railroads for loss of or damage to property from any cause or for overcharge upon any shipments, or for any other service, if not acted upon within ninety days from the date of filing of such claim with the railroad, may be investigated by the commission, in its discretion, and the results of such investigation shall be embodied in a special report which shall be opened to the public inspection and may be included in the next annual report of the commission.

ACTION OF COMMISSION TO BE VALID NOTWITHSTANDING TECHNICAL IRREGULARITY—LIBERAL CONSTRUCTION OF ACT.

Section 59. A substantial compliance with the requirements of this Act shall be sufficient to give effect to all the rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. The provisions of this Act shall be literally construed with a view to the public welfare, efficient transportation facilities, and substantial justice between shippers and passengers and railroads.

RIGHTS OF ACTION NOT WAIVED BY THIS ACT.

Section 60. This Act shall not have the effect to release or waive any right of action by the State or by any person for any right, penalty or forfeiture which may have arisen or which may hereafter arise under any law of this State; and all penalties and forfeiture accruing under this Act shall be cumulative and a suit for, and recovery of one, shall not be a bar to the recovery of any other penalty.

DUTIES AND LIABILITIES SAME AS AT COMMON LAW, WHERE STATUTE SILENT.

Section 61. The duties and liabilities of the railroads defined in Section 11 of this Act, shall be the same as are prescribed by the common law, and the remedies against them the same, except where otherwise provided by the constitution or statutes of this State, and the provisions of this Act are cumulative thereto.

PRESENT SCHEDULE CONTINUED IN FORCE UNTIL APRIL 1, 1907.

Section 62. Until April 1, 1907, unless the commission shall otherwise order, after application and hearing as hereinafter provided, it shall be unlawful for any railroad within the State

to demand, collect, or receive a greater compensation for the transportation of property between points in this State than the charge fixed in the lowest published or effective schedule of rates for the same service between the same points, in force on the first day of January, 1907. Every railroad in this State shall within thirty days after the taking effect of this Act, file in the office of the commission copies of all schedules of rates, including joint rates in force on its line or lines, between points within this State, on the 1st day of January, 1907, and all rates in force between such points at any time subsequent to said date. Any railroad desiring to advance or discontinue any such rate or rates may make application to the commission in writing, stating the advance in or discontinuance of the rate or rates desired giving the reasons for such advance or discontinuation. Upon receiving such application the commission shall fix the time and place for hearing, and give such notice to interested parties as it shall deem proper and reasonable. If, after such hearing and investigation, the commission shall find that the change or discontinuation applied for is reasonable, fair, and just, it shall grant the application either in whole or in part. Any railroad being dissatisfied with any order of the commission made under the provisions of this section may commence a suit against it in the circuit court of the State of Oregon for Marion County in the manner provided in Section 32 of this Act, which suit shall be tried and determined in the same manner as is provided in sections 32, 33, 34, and 35 of this Act.

APPROPRIATION.

Section 63. The sum of thirty-five thousand dollars, or so much thereof as may be necessary to carry this Act into effect, is hereby appropriated out of any money in the general fund of this State, not otherwise appropriated.

EMERGENCY CLAUSE.

Section 64. In view of the fact that the provisions of this Act are necessary to the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in force from and after its approval by the Governor.

Filed in the office of the Secretary of State February 18, 1907.

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U. P. R. R. I. C. C. No. 1978.—Supersedes the following portions

UNION PACIFIC RAILROAD COMPANY.

U. P. R. R. G. F. O. No. 8585.—Supersedes conflicting portions G. F. O. No. 6910.

DENVER & RIO GRANDE RAILROAD COMPANY.

D. & R. G. No. 648.—Supersedes conflicting portions D. & R. G. R. R. No. 111, R. G. W. No. 70-D.

NORTHERN PACIFIC RAILWAY COMPANY.

Nor. Pac. Ry. No. 14127.—Supersedes conflicting portions Nor. Pac. Ry. 7802, 10899, 11116, 11808, 11961, 11855, 12045 and 12338.

GREAT NORTHERN RAILWAY.

OREGON SHORT LINE RAILROAD COMPANY.

O. S. L. No. 1232-U. R.—Supersedes conflicting portions No. 219-U. R.

COLORADO MIDLAND RAILWAY COMPANY.

THE OREGON RAILROAD & NAVIGATION COMPANY.

O. R. & N. No. J-[illegible]—Supersedes conflicting portions O. R. & N. Co. No. J-87.

—IN CONNECTION WITH—

Atchison, Topeka & Santa Fe Railway.
Burlington & Missouri River Railroad in Neb.
Chicago & Alton Railway.
Chicago Great Western Railway.
Chicago & North-Western Railway.
Chicago, Burlington & Quincy Railroad.
Chicago, Burlington & Kansas City Railroad.
Chicago, Milwaukee & St. Paul Railway.
Chicago, Rock Island & Pacific Railway.
Chicago, St. Paul, Minneapolis & Omaha Railway.
Colorado & Southern Railway Company.
Duluth, South Shore & Atlantic Railway.
Green Bay & Western Railroad.
Hannibal & St. Joseph Railroad.
Illinois Central Railroad.
Iowa Central Railway.
Kansas City, St. Joseph & Council Bluffs Railroad.
Leavenworth, Kansas & Western Railway.
Minneapolis & St. Louis Railroad Company.
Missouri, Kansas & Texas Railway.
Missouri Pacific Railway.
St. Joseph & Grand Island Railway Company.
FRISCO SYSTEM:
St. Louis & San Francisco Railroad.
St. Louis, Keokuk & North-Western Railroad.
Wabash Railroad.
Wisconsin Central Lines.

JOINT FREIGHT TARIFF

(GOVERNED BY WESTERN CLASSIFICATION.)

—APPLYING ON—

Merchandise and Commodities

—BETWEEN—

Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, Peoria, St. Louis, Missouri River and Common Points,

—AND STATIONS ON—

OREGON RAILROAD & NAVIGATION CO.

Named in Station Index 3, Page 3.

Issued December 18th, 1903. **Effective January 2nd, 1904.**

By **J. A. MUNROE,**
Freight Traffic Manager, Union Pacific Railroad.
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	R. B. MILLER, G. F. A., O. R. & N. Co., PORTLAND, ORE.		H. M. ADAMS, A. G. F. A., O. R. & Co., PORTLAND, ORE.	

The proper officers of the other above-named roads will certify to the Interstate Commerce Commission their concurrence in the provisions of this issue.

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STATIONS		Index No.
*Alicel	Oregon	75
†*Allen's Spur	"	59
Arlington	"	35
Baker City	Oregon	85
*Barnhart	"	53
Biggs	"	28
Bingham Springs	"	57
Blalock's	"	34
Bonneville	"	12
Bridal Veil	"	8
Cascade Locks	Oregon	13
*Castle Rock	"	44
*Cayuse	"	55
*Cecil's	"	39
*Celilo	"	26
*Clarnie	"	2
†*Conley Siding	"	74
*Corbett	"	5
*Coyote	"	45
Dalles	Oregon	21
Des Chutes	"	27
†*Dodson's	"	10
*Douglas	"	40
Durkee	"	90
Echo	Oregon	50
Elgin	"	77
†*Encina	"	87
*Fairview	Oregon	3
*Fishery	"	23
†*Five Points	"	68
*Foster's	"	49
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Hilgard	"	69
Hood River	"	18
†*Hot Lake	"	78
*Huron	"	60
†*Hutchison	"	83
*Imbler	Oregon	76
Ione	"	41
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La Grande	Oregon	73
*Latourelle	"	7
†*Lexington	"	42
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*Maxwell	Oregon	48
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*Mission	"	54
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†*Murdock	"	64
†*Nibley Spur	Oregon	63
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North Powder	"	82
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*Oneonta	Oregon	9
*Perry	Oregon	70
†*Pierce's Spur	"	73
Pleasant Valley	"	88
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†*Quarry Spur	Oregon	1
*Quinn's	"	33
*Rhea	Oregon	38
*Rooster Rock	"	6
*Rowena	"	20
*Rufus	"	30
†*Ruthton	"	17
*Seufert's	Oregon	22
†*Spring Spur	"	66
*Squally Hook	"	32
†*Steel Spur	"	67
*Stokes	"	46
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*Telocaset	Oregon	81
*Thorn Hollow	"	56
Troutdale	"	4
*Tumwater	"	25
Umatilla	Oregon	47
Union	"	80
*Unity	"	89
Viento	Oregon	15
*Warrendale	Oregon	11
*Weatherby	"	91
*Willows	"	36
*Wyeth	"	14
*Yoakum	Oregon	52

*No Agent. Freight must be prepaid. †Carload freight only will be received and shipped.
‡Less carload freight only will be received and delivered.

SPECIAL RULES AND CONDITIONS.

INSTRUCTIONS AND EXPLANATIONS.

ITEM 1. **Class Rates.**—In case the Class rates named herein, when applied in connection with the current Western Classification, make lower rates than those named on Commodities enumerated herein, the former will govern.

ITEM 2. **Explanation of Characters, Etc.**—L. C. L., less than car load; C. L., car load; N. O. S., not otherwise specified; C. R., carrier's risk; O. R., owner's risk; O. R. B., owner's risk of breakage; O. R.C., owner's risk of chafing; O. R. L., owner's risk of leakage; K. D., knocked down; S. U., set up; Rel., released; P. P., prepaid.

ITEM 3. **Western Classification, Application of.**—Rules and conditions as printed in the Western Classification will apply when not in conflict with the provisions of this Tariff.

ITEM 4. **Minimum Charge.—West-Bound.**—No single shipment, whether composed of one or more classes, will be transported between St. Paul, Minneapolis, Minnesota Transfer, Duluth, Superior, West Superior, or Missouri River common points and stations named herein, for less than 100 pounds at 2d-Class rate.

From Chicago, St. Louis, Peoria, Mississippi River and common points not less than the local charges to St. Paul or Missouri River based on actual weight, Tariff rate, with a minimum of 25 cents, plus the local from St. Paul or Missouri River, the latter not to be less than 100 pounds at 2d-Class rate.

From east of Chicago not less than actual weight at Tariff rate, nor less than 100 pounds at 1st-Class rate, and in no case less than 25 cents to Chicago, plus the local rate at actual weight, minimum 25 cents Chicago to St. Paul, plus the local rate, but not less than 100 pounds at 2d-Class rates St. Paul or Missouri River to destination. The above to apply only when making a less minimum charge than can be made by using the rates from originating point to St. Paul direct, plus the rates from St. Paul or Missouri River to destination.

When rates from points east of Chicago are based on the St. Paul combination the minimum charge to be actual weight at tariff rate, but not less than 100 pounds at 1st-Class rate, and in no case less than 25 cents to St. Paul, plus 100 pounds at 2d-Class rate St. Paul or Missouri River to destination.

But further, that the charges from Mississippi River, St. Paul, Peoria and Chicago and common points, and points east thereof, must not exceed Tariff rate at actual weight, subject to minimum charge based on the combination to and from Pacific Coast Terminals, recognizing the published minimum, which is 100 pounds, at 2d-Class rate to the coast, plus 100 pounds at 2d-Class rate back to destination. For commodity rates from Portland, Ore., see O. R. & N. Tariff No. L-307; I. C. C. No. 706; U. P. G. F. No. 8000. For class rates from Portland see pages 22 and 23, of this Tariff.

It is understood that the lowest through minimum charge applicable via St. Paul will be equalized via Missouri River crossings or vice versa.

East-Bound.—From points named herein to Colorado common points and defined territories east thereof, will be based on 100 pounds at 4th-Class, intermediate rate, as shown on page 38 of Trans-Continental Freight Bureau Tariff, 3-E, I. C. C. No. 318 amendments thereto or subsequent issues.

ITEM 5. **Routing Freight.**—In guaranteeing rates, the right of consignment as to route east of their terminals is reserved by the carriers. Upon freight marked and consigned by routes other than those named in the instructions to agents, Tariff rates to their terminal stations only will be guaranteed and charged.

ITEM 6. **Order Freight.**—Freight consigned **"To Order,"** without additional information as to name and address of some party or firm resident at destination that is to be notified, will not be received unless all charges are prepaid in full.

ITEM 7. **Guarantee of Time.**—The railway companies do not guarantee to carry freight by any particular train nor in time for any particular market and will not be responsible for losses occasioned by delays.

ITEM 8. **Shipper's Count.**—When freight is loaded by shipper, and at "Shipper's Count," the carriers will not be responsible, directly or indirectly, for damage resulting from improper stowage or insufficient packing, or for any discrepancy in count.

ITEM 9. **Dimensions of Cars.**—Owing to the nature of grades, tunnels, snow-sheds, etc., the following are given as the maximum outside dimensions of box-cars which it is safe to run west of Missouri River points:

Length, 50 feet.—**Height,** 13 feet from level of top of rail to the top of eave or edge of roof on side of car.

Width.—If height is 13 feet from top of rail, 10 feet.
If height is not over 12 ft. 6 in. from top of rail, maximum width will be 10 ft.
If height is not over 12 ft. from top of rail, maximum width will be 10 ft. 4 in.

Length, 40 feet.—**Height,** 13 feet from level of top of rail to the top of eave or edge of roof on side of car.

Width.—If height is 13 feet from top of rail, 10 feet.
If height is not over 12 ft. 6 in. from top of rail, maximum width will be 10 ft.
If height is not over 12 ft. from top of rail, maximum width will be 10 ft. 6 in.
Cars which exceed these dimensions in any particular will not be received.

Agricultural Implements, Wagons, and similar freight, when loaded on flat-cars, should not be loaded to exceed 11 feet 6 inches in extreme height above the top of rail, or 9 feet in extreme width, and should be well secured by iron rods passing over the load and connecting the upper ends of the stakes in such a manner as to prevent spreading. The companies reserve the right, when the above conditions are not complied with, to refuse the freight, to transport it entirely at owner's risk of injury from collision with tunnels, water-tanks, snow-sheds, etc., or to remove any excess from the car and charge first-class rates on the same.

Special Note—Light and Bulky Articles Requiring 50-foot Cars.—When carload shipments of light and bulky articles requiring 50-foot cars to contain the required minimum weight are offered and carriers are unable to furnish such equipment, two ordinary cars not exceeding 38 feet in length, internal measurement, may be loaded and charges assessed on basis of actual weight subject to authorized minimum weight applicable for one 50-foot car. This first car must be loaded to its full space capacity, and only a sufficient amount loaded in the second car to equalize the capacity of car which should be furnished.

Agents will note on the face of way-bills, "50-foot car ordered and two cars furnished at convenience of carrier."

Exception: On shipments to stations named herein, where the rate to destination on the commodity offered is made on the basis of the rate to the Pacific Coast Terminal and the local rate back, also where the "Intermediate Commodity Rates," as published in Tariffs of the Trans-Continental Freight Bureau apply as maxima, shall be subject to Rule 26 of T. C. F. B. tariff No. 4-B., I. C. C. No. 319.

ITEM 10. **Property Misrepresented.**—When articles are shipped under a false name in order to deceive the carrier or to avoid this Tariff, agents at destination will collect charges according to proper classification; and in the case of loss or damage, consignee will be paid for the articles as called or shipped. Rates named in bills of lading on property misrepresented or wrongly described are illegal and will not be protected.

ITEM 11. **Mixed Carloads.**—When rate for carload is not named, the rate which is given will govern regardless of quantity, and no two or more articles having a carload rate shall be shipped in mixed carloads at the carload rate unless so provided, except that where two or more articles are mentioned in one paragraph, or bracketed paragraphs, they may be forwarded in straight or mixed carloads at the rate shown.

ITEM 12. **Release or Owner's Risk.**—(a.) As the right is conceded to carriers to limit their liability for property offered to them for transportation, by fixing reduced rates thereon, in consideration of the same being shipped at owner's risk of loss or damage and the shipper assuming the risks of transportation not the result of the carrier's negligence, in order to obtain the benefit of said reduced rates, the shipper or his authorized agent must note on the shipping-order and receipt, or bill of lading, or both, given for the property, the words "Owner's risk," or the letters "O. R." The said notation shall constitute a perfect release to the carrier's against the liability from which relief is sought.

(b.) When commodity rates are conditioned on owner's risk of breakage, chafing, damage, or leakage, etc., and the shipper will not accept the rating at the specified class of risk, the article will be charged 20 per cent. in addition to the rate provided at the specified risk unless class rates governed by the Western Classification make lower rates.

(c.) When an article is rated "Released," shipper or owner, or the authorized agent of either, must execute a release on the customary form for all property so rated, to secure a released rate. If the shipper or owner refuses to execute a release on the customary form the property will be charged 20 per cent. in addition to the released rate, unless class rates governed by the Western Classification make lower rates.

ITEM 13. **Valuation.**—(a). Where the Tariff provides for a reduced rate based on a certain fixed valuation, the shipper or his authorized agent must note, over his own signature, such valuation on the shipping-order and receipt, or bill of lading. Record of this valuation must be made on the way-bill or manifest.

(b.) Articles provided for in the list of Commodities (pages 16 to 28, inclusive), at a limited valuation, and not specifically provided for without valuation, will be amenable to the provisions of sections "b" and "c" of Rule 12.

ITEM 14. **Articles in Boxes, Crates, or Bales.**—(a.) When commodity rates enumerated herein provide for articles "boxed," and do not provide for the same in crates, racks, bales, bags, or bundles, they will take, when shipped in crates or racks, 25 per cent. higher than rates in boxes; and when shipped in bales, bags, or bundles, 50 per cent. higher rates than in boxes (when same rate is provided for articles in crates as in boxes, when shipped in bales, bags, or bundles, they will take 50 per cent, higher rates), unless class rates governed by the Western Classification make lower rates. The term "boxed" used in this Tariff is intended to mean packages made entirely of lumber, or lumber and metal, completely enclosing the contents. Packages consisting of Binders' Board, loose Wooden Boards, Wood Fibre, or similar material, enclosed in wooden frames, or consisting of Basket Work (woven, wood, and wire), will be considered crates.

(b.) When not otherwise specified the commodity rates provided for articles in boxes will apply to the same articles when shipped in barrels, and vice versa.

ITEM 15. **Preservatives.**—(a.) On carload shipments of Beer, in wood, and other perishable freight requiring preservatives, shippers may load in car with freight 3,000

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pounds of ice or 2,000 pounds of hay, straw, sawdust, or tanbark. When all these preservatives are used total weight shall not exceed 3,000 pounds, excess to be charged for at the rate charged on the Beer or other perishable freight. On such preservatives as may be taken from car by consignee, freight to be charged at the rate charged on freight in car.

(b.) On shipments of Fresh Meats, Fish, and other articles, **in less than carload lots,** for the preservation of which ice is used, the actual gross weight of the shipment, (including the property shipped and the packages, together with the ice and other packing material), as is found at point of shipment at the time of receipt by the railroad company, shall be charged for.

ITEM 16. **Articles "in the Rough, White, or Finished."**—(a.) The classification of articles "In the rough" applies to such articles when sawed, hewn, or planed, and before any manufacturing process has begun.

(b.) The classification "in the white" applies after the manufacturing process has begun (and may include one coat of priming), but when the article has not been painted or varnished.

(c.) The classification "Finished" applies to the article after it has passed the stage of manufacture covered by sections "a" and "b" of this rule.

ITEM 17. **Stopping to Load or Unload in Transit.**—Carload rates will apply only to full carload shipments from one consignor in one day at initial point of shipment, consigned and to be delivered to one consignee at one destination. Less than full carloads will be subject to the less than carload rates, but not to exceed charges for full carload. Cars will not be allowed to be stopped in transit at any point intermediate to complete loading or to partly unload.

ITEM 18. **Lumber Used for Bracing Shipments of Stoves.**—On shipments of Stoves and Stove Furniture, requiring timber bracing to prevent damage by breakage, shippers may be allowed to place in cars with freight not to exceed 700 pounds of lumber for such purpose. On such dunnage as may be taken from car by consignee, freight to be charged at the rate charged on freight in car.

ITEM 19. **Weights on Shipments of Grain originating at stations on B. & M. R. R. R.:**

Grain should not be loaded above marked capacity of car, and in loading cars shippers should be guided by the grain-loading line.

(a.) Grain, N. O. S., minimum weight will be marked capacity of cars.

(b.) Oats, will be subject to the following minimum weights, but not to exceed the marked capacity of cars.

In cars not exceeding 28 feet in length, 30,000 pounds.
In cars not exceeding 34 feet in length, 34,000 pounds.
In cars not exceeding 36 feet in length, 40,000 pounds.
In cars over 36 feet in length, 50,000 pounds.

(c.) Ear Corn will be subject to the following minimum weights, but not to exceed the marked capacity of cars.

In cars not exceeding 28 feet in length, marked capacity of car.
In cars not exceeding 34 feet in length, 50,000 pounds.
In cars not exceeding 36 feet in length, 60,000 pounds.
In cars over 36 feet in length, 70,000 pounds.

Ear Corn shelled in transit, 80 per cent. of above figures when charges are based on weight of Corn after shelling.

(d.) Flaxseed, Buckwheat, and Millet Seed will be subject to a minimum weight of 30,000 lbs., unless Tariffs or classification rates and minimum weights make less.

MAXIMA.

ITEM 20. It should be understood that through rates to or from points on the Oregon Railroad & Navigation Company, except where otherwise specially provided in item 31, named herein via Missouri River crossings will not be higher than rates to or from same points via St. Paul, or vice versa.

Where the rate to or from point of shipment to the nearest North Pacific Coast "Terminal" added to the local rate from such "Terminal" to point of destination is lower than rate shown in this Tariff the former will govern; but the rate so obtained will not be the maximum rate to any intermediate point on main or branch lines east of such point of final destination.

Example (West-Bound): Suppose the rate Pittsburg to Umatilla is $3.60 per 100 lbs., and suppose the rate Pittsburg to Portland, Ore., is 75 cents per 100 lbs., added to rate Portland to Umatilla of $1.25, makes through rate Pittsburg to Umatilla of $2.00 per 100 lbs. This latter rate is maximum rate in this case to Umatilla, but is not the maximum rate to be applied to Huntington, Ore., or any point except points to which the same through rate and local back would apply.

Example (East-Bound): Suppose the rate from Umatilla to New York City is $3.10 per 100 pounds, and suppose the rate from Umatilla to Portland is 79 cents per 100 pounds, added to rate from Portland to New York of $1.00 per 100 pounds, makes through rate Umatilla to New York City of $1.79 per 100 pounds. This latter rate is the maximum rate in this case from Umatilla to New York City, but is not the maximum rate to be applied from Huntington, Ore., or from any point except points from which the same local rate to Portland plus through rate Portland to New York would apply.

The class and commodity rates, pages 14 to 21, inclusive, will be the maximum rates from Missouri River common points, St. Louis and common points, and Chicago and common points, to Umatilla, all points on Oregon Railroad & Navigation Company named herein, unless the terminal class and commodity rates to Portland, Ore., as shown in Trans-Continental Freight Bureau West-bound Tariff No. 4-B, T.-C. F. B. I. C. C. No. 319, or subsequent issues), plus the local rates Portland to destination, are lower, in which case the latter will govern.

For local class rates from Portland, Ore., to points named herein, see pages 22 and 23.

For local commodity rates from Portland, Ore., to points named herein, see O. R. & N. tariff No. L-307, I. C. C. No. 706.

On traffic originating at points east of the Indiana-Illinois state line, special proportional rates and exceptions to the Official Classification, are published by the Western Trunk Line Committee, applying from Chicago, Peoria, St. Louis and common points, to St. Paul, Minneapolis, Duluth, and Missouri River common points, which in connection with the full Tariff rates from St. Paul, Minneapolis, Duluth, and Missouri River points to points on the O. R. & N. Co. as shown in this Tariff, will make lower through rates from Chicago, Peoria, St. Louis, and common points, to points on the O. R. & N. Co. than are shown herein. **Before quoting or applying rates on such traffic, agents must carefully note provisions of Western Trunk Line Committee Tariff No. 160, I. C. C. No. 248, as amended or superseded, which provides for special rates and rules mentioned above.**

ITEM 21. **EQUALIZATION OF RATES.**

On all business coming from Central Traffic and Trunk-Line territory destined to points on O. R. & N. Co., and Gt. Nor. Ry. as specified in Tariff, or on east-bound business from such points to Central-traffic and Trunk-line territory, it should be understood that the U. P. R. R.,Nor. Pac. Ry., Gt. Nor. R. R. and D. & R. G.R.R. and connections, will, in connection with the O. R. & N. Co., protect the lowest through rate that it is possible to make on the combination of prevailing rates via any all-rail route, whether the business is hauled over the route on which such through rate is based, or via any other route that is reasonably direct.

ITEM 21.—Continued **EQUALIZATION OF RATES.**—Continued.

On all business from Chicago and common points, as specified in Western Trunk Line Committee Tariff No. 168, I.C.C. No. 324, amendments thereto, or subsequent issues thereof, destined to O. R. & N. Co. points, or on east-bound business from and to same territory via St. Paul or Missouri River crossings, will be the lowest combination of prevailing **all-rail** rates via either route, and will be observed as a maximum to and from Mississippi River common points, East St. Louis to Dubuque, inclusive.

Rates shown in Western Trunk Line Committee Tariff, No. 168, I. C. C. No. 324, applying between Chicago and St. Paul, also Western Trunk Line Committee Tariff No. 173, I. C. C. No. 339, applying between Missouri River crossings, and Chicago, St. Paul, etc., or as they may be subsequently amended or reissued, when added to rates applying between O. R. & N. Co. points named herein and St. Paul, or Missouri River crossings, must not be exceeded.

ITEM 22. **The Columbia Southern Railway** is in operation from Biggs, Ore., to Shaniko, Ore. Shipments for stations on this road should be way-billed to Biggs, Ore., at Tariff rates applying to that point.

BASIS FOR RATES TO AND FROM STATIONS ON THE COLUMBIA SOUTHERN RAILWAY.
(Governed by Western Classification.)

BETWEEN **BIGGS, OREGON,** AND	CLASS RATES IN CENTS PER 100 POUNDS									
	1st	2d	3d	4th	5th	A	B	C	D	E
*Gibsons.....Ore.	10	10	10	10	7½	10	7½	5	5	5
*Sinks..... "										
Wasco..... "										
*Klondyke..... "	15	14	13	12	10	11	9	8	7	6
*Summit..... "	17	16	15	13	11	12	10	9	8	7
‡*Hay Canon Jct.. "	20	18	16	14	12	13	10	9	8	7
†*Hay Canon..... "	20	18	16	14	12	13	10	9	8	7
*McDonalds..... "	22	20	18	15	13	14	11	10	9	8
*DeMoss..... "	23	22	20	16	14	15	12	10	9	8
Moro..... "	25	25	20	17½	15	17	13	11	10	9
*Erskinville..... "	30	27	24	19	19	18	14	12	11	10
Grass Valley..... "	35	35	26	22½	20	20	16	13	12	10
*Bourbon..... "	45	40	35	30	30	27	18	14	12	10
*Guthrie..... "	53	48	42	36	36	31	21	16	13	11
*Wilcox..... "	56	50	44	37	37	32	22	17	14	11
Shaniko..... "	62	54	48	39	39	34	24	17	14	12

‡Hay Canon Junction—Less than carload freight only will be received and delivered.
†Hay Canon—Carload freight only will be received and delivered. Less than carload freight destined to Hay Canon will be delivered at Hay Canon Junction.

Minimum charge, 100 pounds at second-class rate, but in no case less than 25 cents.

*No Agent. Freight must be prepaid.

APPLICATION OF RATES.

Item 23. **MISSOURI RIVER COMMON POINTS.**

For Routing, see Item 27.

Missouri River common point rates named herein will apply (unless otherwise specified.)

—TO OR FROM—

Sioux City, Council Bluffs, Iowa; Omaha, Neb., St. Joseph, Kansas City, Mo.; Atchison, Leavenworth, Kas.;

—ALSO TO OR FROM—

ROAD	
1 A. T. & S. F. Ry.	All points located on A. T. & S. F. Ry., in Kansas and Superior, Neb. (See Item 27, Sec. I.)
2 B. & M. R. R. R.	All points located on B. & M. R. R. R., in Kansas, Nebraska, except west of Abbott, Neb., on the Main Line and north of Sidney, Neb., or in Colorado, except when the Denver rates apply, or when combination of locals on points taking Denver rates would make less. (See Item 27, Sec. II.)
3 C. M. & St. P. Ry.	Sioux City, Council Bluffs, Ia.; Omaha or South Omaha, Neb. (See Item 27, Sec. III and XV.)
4 C. & N. W.	All stations in Nebraska, Neligh and East, also all points in Iowa directly intermediate, Sioux City to Council Bluffs, inclusive. (See Item 27, Sec. IV and XV.)
5 C. R. I. & P. Ry.	All points located on C. R. I. & P. Ry. in Kansas, Nebraska or Colorado, except where combination of locals on points taking Denver rates will make less. (See Item 27, Sec. V.)
6 C. St. P. M. & O. Ry.	All stations directly intermediate with Sioux City via Omaha or Norfolk. (See Item 27, Sec. VI and XV.)
7 K.C.,St.J.&C.B.R.R.	All main line stations on K. C. St. J. & C. B. R. R., Council Bluffs, Iowa, to Kansas City, Mo., inclusive. (See Item 27, Sec. VII.)
8 L. K. & W. Ry.	All points in Kansas located on L. K. & W. Ry. (See Item 27, Sec. VIII.)
9 M. K. & T. Ry.	All points on M. K. & T. Ry. in Kansas. (See Item 27, Sec. IX.)
10 Mo. Pac. Ry.	All points on Mo. Pac. Ry. in Kansas, Nebraska or Colorado, except when combination on Pueblo would make less. (See Item 27, Sec. X.)
11 St. J. & G. I. Ry.	All stations in Missouri, Kansas and Nebraska. (See Item 27, Sec. XII.)
12 St. L. & S. F. Ry.	All stations in Kansas. See Item 27, (Sec. XIII.)
13 U. P. R. R.	All stations in Nebraska, Kansas, Wyoming and Colorado, except where Denver rates apply or where combination of locals on points taking Denver rates would make less. (See Item 27, Sec. XIV.)

APPLICATION OF RATES—Continued.

Item 24. ST. PAUL, MINNEAPOLIS AND MINNESOTA TRANSFER GROUP.

ROAD	TO OR FROM
1 C. G. W. Ry.	All points on direct lines of C., G. W. Ry. between Minneapolis and Missouri River, including Mankato, Mantorville and Osage, except where combination of locals on Missouri River makes less, or except where Mississippi River rates apply. (See Item 28, Sec. I).
2 C. M. & St. P. Ry.	St. Paul, Minneapolis and Minnesota Transfer, Minn. (See Item 28, Sec. II.)
3 C. S. P. M. & O. Ry.	All main and branch line points on C. S. P. M. & O. Ry. north of Sioux City, Iowa, to and including St. Paul and Minneapolis, Minn., except where combination of locals on Sioux City will make less when the latter will govern. (See Item 28, Sec. III.)
4 Grt. Nor. Ry.	All points on Grt. Nor. Ry. in Minnesota, North Dakota, South Dakota, main line and branches west of and including St. Paul Minneapolis, and Cass Lake, Minn. (See Item 28, Sec. IV.)
5 M. & St. L. R. R.	All points on direct line of M. & St. L. R. R., Ft. Dodge and Des Moines, Iowa, to St. Paul and Minneapolis, Minn. (See Item 28, Sec. V.)
6 Nor. Pac. Ry.	All points on main line and branches of Nor. Pac. Ry. in Minnesota and North Dakota, St. Paul, Minneapolis, Minn., and west. (See Item 28, Sec. VI.)
7 W. & S. F. Ry.	All points on W. & S. F. Ry. north of Sioux City, Iowa, except where combination of locals on Sioux City, Iowa, will make less. (See Item 23, Sec. VII.)

Item 25. DULUTH GROUP.

1 C. St. P. M. & O. Ry.	All points east of St. Paul, via North Wisconsin Junction to Duluth, Superior, West Superior, Bayfield and Ashland. (See Item 29, Sec. I.)
2 C. M. & St. P. Ry.	Cloquet, Duluth, New Duluth, South Superior, Superior, West Duluth and West Superior. (See Item 29, Sec. II.)
3 Great Northern Ry.	All points east of Minneapolis and Cass Lake, Minn. (See Item 29, Sec. III.)
4 Northern Pacific Ry.	All points east of St. Paul, Minneapolis, and Staples, Minn. (See Item 29, Sec. IV.)

Item 26. CHICAGO, PEORIA, ST. LOUIS, AND COMMON POINTS.

(For Routing, see Items 27 and 28.)

Following is a list of publications naming **Points Common** with Chicago, Milwaukee, Peoria, St. Louis, etc., the use of which (and amendments or subsequent issues), is hereby authorized in connection with this Tariff:

Atchison, Topeka & Santa Fe Ry. Joint Cir. 2000, Topeka I. C. C. No. 1459.
Chicago & North-Western Ry. G. F. D. No. 70587, I. C. C. No. 3749.
Chicago & Alton Ry. G. F. D. No. 5779, I. C. C. No. 987.
Chicago, Milwaukee & St. Paul Ry. G. F. D. 34359, I. C. C. No. 4665-A.
Chicago, Rock Island & Pacific Ry. G. F. D. No. 69-C, I. C. C. No. C-2967.
Chicago, Burlington & Quincy Ry. G. F. O. No. 1273, I. C. C. No. 3152.
Chicago Great Western Ry. G. F. D. 9736.
Illinois Central R. R. Tariff No. A-4273, I. C. C. No. 2263.
Iowa Central Ry. G. F. O. 2640, I. C. C. No. 1475.
Minneapolis & St. Louis Ry. Circular No. 269 of 1901, I. C. C. No. A-642.
Missouri Pacific Ry. Amdt. 36 to Tariff No. 3207, Amdt. No. 50 to I. C. C. No. 2542.
Wabash R. R. No. 23600, I. C. C. No. 756.

NOTE.—Notwithstanding that some of the above publications contain clauses limiting application thereof to territory "East of Kuna," it should be understood that the use of such publications in determining the rates to or from ALL POINTS covered by this Tariff is hereby authorized, except where such application is herein specifically restricted. Where the above application sheets conflict with the specific application of St. Paul and Duluth rates as provided herein, the latter will govern.

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Item 27. ROUTING ON TRAFFIC TO OR FROM MISSOURI RIVER COMMON POINTS.

ROAD	TO OR FROM	VIA	IN CONNECTION WITH
I. A. T. & S. F. RY.	Points as per Item 23-1	Colorado Junctions.	D. & R. G. R. R. or C. M. Ry. and D. & R. G. R. R. — Ogden, O. S. L. R. R.
II. B. & M. R. R.	Points as per Item 23-2	Denver, Colo	U. P. R. R., Granger, O. S. L. R. R.; D. & R. G. R. R. or †C. M. Ry. and D. & R. G. R. R. — Ogden, O. S. L. R. R.
III. C. M. & ST. P. RY.	Points as per Item 23-3	Council Bluffs, Ia.	U. P. R. R., Granger, O. S. L. R. R.
		Council Bluffs, Ia.	Connecting lines and D. & R. G. R. R.
		Minn. Trans., Minn.	G. N. Ry., or Nor. Pac. Ry., C. M. Ry. and D. & R. G. R. R.
IV. C. & N. W. RY.	Points as per Item 23-4	Council Bluffs, Ia.	U. P. R. R., Granger, O. S. L. R. R.; Connecting lines D. & R. G. R. R. or Connecting lines †C. M. Ry. and D. & R. G. R. R.
		Sioux City, Ia.	W. & S. F. Ry., Wilmar, Minn., G. N. Ry.; C. St. P. M. & O. Ry., Minn. Trans., Minn., G. N. Ry.; C. St. P. M. & O. Ry., Minn. Trans., Minn., N. P. Ry.
	Nebraska Division Points	Fremont or Norfolk, Neb.	U. P. R. R., Granger, O. S. L. R. R.
		Norfolk, Neb	C. St. P. M. & O. Ry. and connections via Sioux City as above.
V. C. R. I. & P. RY.	Points as per Item 23-5	Pullman, Colo.	U. P. R. R., Granger, O. S. L. R. R.
		Colorado Junctions.	D. & R. G. R. R. or C. M. Ry. and D. & R. G. R. R. — Ogden, O. S. L. R. R.
VI. C. ST. P. M. & O. RY.	Points as per Item 23-6	Norfolk, Neb	U. P. R. R., Granger, O. S. L. R. R.
		Omaha, "	Connecting lines.
		Minn. Trans., Minn.	G. N. Ry.; N. P. Ry.
VII. K.C.ST.J. & C.B. R.R.	Points as per Item 23-7	Council Bluffs, Ia.	C. & N. W. Ry., Sioux City, Ia., W. & S. F. Ry., Wilmar, Minn., G. N. Ry.
		Pacific Junction, Ia.	B. & M. R. R. R., Omaha, C. St. P. M. & O. Ry., Minn. Trans., Minn., G. N. Ry.; B. & M. R. R. R., Omaha, C. St. P. M. & O. Ry., Minn. Trans., Minn., N. P. Ry.
		B. & M. R. R. R.	Denver, U. P. R. R., Granger, O. S. L. R. R.; Denver, D. & R. G. R. R., or †C. M. Ry. and D. & R. G. R. R.
VIII. L. K. & W. RY.	Points as per Item 23-8	Garrison Cr'sg, Kas.	U. P. R. R., Granger, O. S. L. R. R. or U. P. R. R., Denver, Colo., D. & R. G. R. R., or †C. M. Ry. and D. & R. G. R. R. — Ogden, O. S. L. R. R.
		Clay Center. "	
IX. M. K. & T. RY	Points as per Item 23-9	Junction City, Kas.	U. P. R. R.
X. MO. PAC. RY.	Points as per Item 23-10	Colorado Junctions.	D. & R. G. R. R., or †C. M. Ry. and D. & R. G. R. R. Ogden, O. S. L. R. R.
		Omaha, Neb.	C. St. P. M. & O. Ry., Minn. Trans., Minn., G. N. Ry.; C. St. P. M. & O. Ry., Minn. Trans., Minn., N. P. Ry.
	Atchison, Kas	Leavenworth, Kas.	U. P. R. R.,
XI. O. R. & N. CO.	All traffic	Wallula Jct., Wash.	Nor. Pac. Ry.
		Spokane, "	G. N. Ry.
		Huntington, Ore.	O. S. L. R. R.
XII. S. J. & G. I. RY.	Points as per Item 22-11	Grand Island, Neb.	U. P. R. R.
		Fairbury, Neb.	C. R. I. & P. Ry.
XIII. S. L. & S. F. RY.	Points as per Item 23-12	Ellsworth, Kas.	U. P. R. R.

†In connection with A. T. & S. F. Ry., or C. & S. Ry.

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Item 27. ROUTING ON TRAFFIC TO OR FROM MISSOURI RIVER COMMON POINTS—Continued.

ROAD	TO OR FROM	VIA	IN CONNECTION WITH
XIV. U. P. R. R.	All traffic as per Item 23	Granger, Wyo.	O. S. L. R. R.
		Denver, Colo.	D. & R. G. R. R., or †C. M. Ry. and D. & R. G. R. R.
	TO OR FROM SIOUX CITY, IOWA, BETWEEN		
XV.			
*C. & N.-W. RY.	Sioux City and Council Bluffs		All lines.
§C. M. & ST. P. RY.	Sioux City and Council Bluffs		All lines.
¶C. ST. P. M. & O. RY.	Sioux City and Omaha		All lines.
¶C. ST. P. M. & O. RY.	Sioux City and Norfolk		U. P. R. R.
§ILL. CENT. R. R.	Sioux City and Council Bluffs		All lines.
W. & S. F. RY.	Sioux City, Iowa, only		Wilmar, Minn., G. N. Ry.

*Will not apply on Grain or Grain Products.
¶Will not apply on Grain, but will apply on Grain Products.
§Will not apply to or from points intermediate
†In connection with A. T. & S. F. Ry., or C. & S. Ry.
The application of Missouri River rates on traffic routed via Grt. Nor. Ry., or Nor. Pac. Ry., must not reduce rates to or from points north of Sioux City, otherwise provided for in Item 24.

Item 28. ROUTING ON TRAFFIC TO OR FROM ST. PAUL, MINNEAPOLIS, MINNESOTA TRANSFER AND COMMON POINTS.

ROAD	TO OR FROM	VIA	IN CONNECTION WITH
I. C. G. W. RY.	Points as per Item 24, Sec. 1	Missouri River	And connecting lines.
		St. Paul	And connecting lines.
II. C. M. ST. P. RY.	Points as per Item 24, Sec. 2	Missouri River	And connecting lines.
		St. Paul	And connecting lines.
III. C. ST. P. M. & O. RY.	Points as per Item 24, Sec. 3	Minnesota Transfer	And connecting lines.
		Omaha	And connecting lines.
		Norfolk	U. P. R. R.
IV. GRT. NOR. RY.	Points as per Item 24, Sec. 4	Spokane, Wash.	And O. R. & N. Co.
V. M. & ST. L. RY.	Points as per Item 24, Sec. 5	Ft. Dodge	I. C. R. R., Council Bluffs, Ia., and connecting lines.
		St. Paul	And connecting lines.
VI. NOR. PAC. RY.	Points as per Item 24, Sec. 6	Wallula Jct.	O. R. & N. Co.
VII. W. & S. F. RY.	Points as per Item 24, Sec. 7	Sioux City, Ia.	C. & N.-W., Council Bluffs and connecting lines.
		Willmar, Minn.	G. N. Ry.

Item 29. ROUTING ON TRAFFIC TO OR FROM DULUTH, MINN., AND COMMON POINTS.

ROAD	TO OR FROM	VIA	IN CONNECTION WITH
I. C. ST. P. M. & O. RY.	Points as per Item 25, Sec. 1	Missouri River Crossings	Connecting lines.
		Norfolk, Neb.	U. P. R. R.
		Minn. Trans., Minn.	Connecting lines.
II. C. M. & ST. P. RY.	Points as per Item 25, Sec. 2	Missouri River	Connecting lines.
III. GRT. NOR. RY.	Points as per Item 25, Sec. 3	Spokane, Wash.	O. R. & N. Co.
IV. NOR. PAC. RY.	Points as per Item 25, Sec. 4	Wallula Jct., Wash.	O. R. & N. Co.

Item 30. ROUTING ON TRAFFIC TO OR FROM CHICAGO, PEORIA, ST. LOUIS AND COMMON POINTS.

The routing provided for in Items 27 and 28 on traffic to or from Missouri River and St. Paul and common points will also govern west of those points on traffic to or from Chicago, Peoria, St. Louis and common points.

CLASS RATES.

ITEM 31. Between all stations on Oregon Railroad & Navigation Co. named in Station Index 3, via routes specified in items 27, 28, 29 and 30.

AND	CLASS RATES IN CENTS PER 100 POUNDS.									
	1st	2d	3d	4th	5th	A	B	C	D	E
Missouri River common points on or via U. P. R. R. or D. & R. G. R. R.	300	260	220	190	160	160	125	100	95	85
St. Paul, Duluth, Minn., Superior, West Superior, Wis., and common points, via Nor. Pac. Ry. or Grt. Nor. Ry	300	260	220	190	160	160	125	100	95	85
Missouri River points via Northern Pacific Ry.,or Great Northern Ry	300	260	220	190	160	160	125	100	95	85
St. Louis and Common points	360	305	255	215	180	185	144½	117	108½	96
Chicago, Peoria and common points	360	310	260	215	180	185	145	117	109	98

Item Number	COMMODITIES, C. L.—West-bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See item 26.	Peoria and Common Points. See item 26.	St. Louis and Common Points. See item 24.	St. Paul and Common Points. See item 24.	Missouri river points, etc. See item 23.
32	Agricultural Implements (Except Hand): Windmills and articles classified as vehicles in Western Classification, (except Automobiles and Children's Vehicles), and parts thereof, straight or mixed carloads, minimum weight 20,000 pounds	165	165	165	165	145
33	Agricultural Implements (Hand) Forks, barley (wooden), Forks, hay or manure, Forks, spading, Hoes, Rakes (wooden or iron), Scythes, and Snaths, Shovels and Spades, straight or mixed carloads, minimum weight 20,000 pounds	215	210	205	205	170
34	Bags and Bagging, burlap and gunny, compressed in bales or in bundles	.....	.....	.....	.....	149
35	Baking Powders and Baking Powder Compounds, straight or mixed carloads	162	159½	157	157	130
36	Beer, Beer Tonic, Hop Tonic, Hop Tea Tonic, Weiss Beer, Liquid Bread, Malt Ale and Porter, O. R. B. and L., freezing and fermenting; subject to estimated weights provided in Western Classification, minimum weight 20,000 pounds	100	100	100	100	109
37	Bottles (glass),common,Demijohns,Flasks (glass),common, in boxes, barrels or crates, O. R. B., straight or mixed carloads	148	145½	143	141	121

Item Number	COMMODITIES, C. L.—West-bound. IN CENTS PER 100 POUNDS. Minimum Weight 80,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See item 25 and 26.	Peoria and Common Points. See item 26.	St. Louis and Common Points. See item 26.	St. Paul and Common Points. See item 24.	Missouri River points, etc. See item 23.
38	Bottles, wine or beer, O. R. B., straight or mixed carloads	130	127½	125	123	103
39	Brick, common, pressed (including Fire and Fire Clay, but not enameled brick); minimm weight 40,000 lbs	.....	.....	.....	69½	60
40	Butter, Butterine, Oleomargarine, Eggs, Cheese and Dressed Poultry, (in packages), straight or mixed car loads, O. R., waste, weather, decay, and delay, minimum weight 20,000 pounds. (See also item 79 for Dressed Poultry in mixed car loads with Fresh Meat.)	200	200	200	200	200
41	Canned Goods, Viz.: Preserved Fish, Fruits, Meats (including potted or deviled) Vegetables, Soups, Breads, Condensed Milk, Puddings, and Sardines in hermetically sealed tin cans, boxed, O. R. weather. (See also Condensed Milk, item 49)	145	142½	140	138	125
42	Cereals and Cereal Products or Preparations, Viz.: Flour, (Wheat, Rye, Buckwheat or Pancake), Bran, Chopped Corn, Cracked Corn, Pop Corn, Rolled Rye, Rolled Oats, Cracked Wheat, Cerealine, Corn Flake, Farina, Germea, Vitos, Shredded Biscuit, MaltaVita, Grape Nuts, Refined Grits, Brewers' Cerealine, Hominy, Grits, Maizea, Bean Meal, Pea Meal, Corn Meal, Oatmeal, Pearl Barley, Farinose, Brewers' Meal, Brewers' Grits, or Malt, straight or mixed carloads. NOTE.—Postum Cereal will not be accepted at these rates. Postum Cereal will take rates applying on Coffee and Coffee Substitutes.	80	80	75	70	70
43	*Oats, *Corn, ‡Corn Meal, ‡Brewers' Meal, ‡Brewers' Grits, Hominy, Oil Cake and Meal, Chopped Corn and Feed, straight or mixed car loads. *Rates on Grain will not apply from points on Chicago, St. Paul, Minneapolis & Omaha Railway. ‡Rate on Corn Meal, Brewers' Meal and Brewers' Grits will also apply from Nebraska City, Neb., via Mo. Pac. Ry., and Papillion, Neb., U. P. R. R. and western connections.	76	73½	71	70	60
44	Chimneys and Lantern Globes (glass), in boxes, barrels or crates, O. R. B., Rel., minimum weight 16,000 lbs.	200	195	190	195	160
45	Coal, Hard	62½	61[38]	60¼	62½	50
46	Coal, Blacksmith's	61¼	60[13]	59	61¼	50
47	Coke	53½	52[375]	51¼	51	45
48	Coffee, Roasted or Ground, minimum weight 24,000 lbs.	152	149½	147	145	125
49	†Condensed Milk, from Highland or Greenville, Ill. †Shipments should be routed via Terre Haute & Indianapolis Railroad (Vandalia Line), via Vandalia or East St. Louis, Ill.		Chicago		Rates	

Item Number	COMMODITIES, C. L.—West-bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See items 25 and 26.	Peoria and Common Points. See item 26.	St. Louis and Common Points. See item 26.	St. Paul and Common Points. See item 24.	Missouri River Points, etc. See item 23.
50	Crockery, Queensware, and Earthenware, in boxes, barrels, casks, tierces, crates, or hogsheads, O. R. B., min. wt. 24,000 lbs. (See also Item 51)	156	156	156	149	140
51	Earthenware or Stoneware (common brown, not crockery), minimum weight 24,000 pounds. (See also Item 50) ‡Will also apply from Red Wing, Minn., Monmouth, Macomb, Colchester, Galesburg, Alexis, and Whitehall, Ill. †Rate from Clinton, Calhoun, Deerfield, Boonville and Pierce City, Mo., $1.09 per 100 pounds.	130	126½	‡122½	122½	†103
52	Emigrant's Movables. (See Tariff U.P.G.F.O. No.8092, D. & R. G. No. 171-B, O.S.L. No. 1115-U.R., O.R. & N. Co. No. J-118, Nor. Pac. Ry. No. 12106, Gt. Nor. Ry. G. F. O. No. 9700, of 1903, I.C.C. No. A-1087, as amended or superseded					
53	Fruits, Fresh, as follows: Bananas and Cocoanuts, O. R. weather, decay, shortage and delay, released, prepaid or guaranteed, charges to be computed on basis of railroad weight, as ascertained at point of shipment, in straight or mixed carloads, minimum weight 20,000 pounds NOTE 1—With one or more cars of Bananas one man may be passed free, in charge of same, both ways. Return trip must be begun within seven (7) days after arrival at destination.	.....	.....	125	.....	125
54	Fruits, Fresh, Tropical and Domestic, N.O.S., (including Cocoanuts but not including Cranberries), O.R. weather, decay and delay, P. P. or guaranteed, minimum weight in refrigerator cars, except ‡Grapes, 24,000 lbs., in other than refrigerators, 20,000 lbs ‡Minimum weight on Grapes in refrigerator cars 20,000 pounds.	175	170	165	165	158
55	FURNITURE—Released as follows: Bedsteads, wooden (including Folding Beds), Bureaus and Washstands, actual value of each piece enumerated not to exceed the following, and so receipted for—Bedsteads and Folding Beds $8.00 each, Bureaus $10.00 each, Washstands $4.00 each; straight or mixed carloads; min. wt. 20,000 pounds	145	141½	137½	137½	125
56	Bedsteads (iron), Cribs (iron), Institution Beds (iron), plain or with brass trimmings, K. D., released	145	141½	173½	137½	125
57	Furniture, School, viz.: School Desks and Seats for pupils, minimum weight 24,000 pounds	165	157½	160	165	145
58	Ginger Ale, in straight carloads, or in mixed carloads with Mineral Water, O. R. B. and L., P. P. or guaranteed, minimum weight 24,000 pounds (See also Item 80 for rates on Mineral Water.)	125	122½	120	125	110
59	Glass, common window, boxed, O. R. B.	142	139½	138	135	125

Item Number	COMMODITIES, C. L.—West-bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See items 25 and 26	Peoria and Common Points. See item 26.	St. Louis and Common Points. See item 26.	St. Paul and Common Points. See item 24.	Missouri River points, etc. See item 23.
60	Glucose, in barrels; Glucose Jelly, in kegs, kits or pails, Syrup (Corn, Glucose, and Maple) and Molasses, O. R. L. ,Rel., straight or mixed carloads ..... *Not good via U. P. R. R. or D. & R. G. R. R.	*95	*93	95	*80	80
61	Grease, Axle, (including Mineral or Petroleum Axle Grease), in packages.	147	144½	142	140	125
62	IRON AND STEEL, ARTICLES OF,—O. R. wet and rust: Bar (including plain Shafting without connections), Band, Rod, Hoop or Slab, straight or mixed carloads,	125	122½	120	120	100
63	Boiler Plate, not bent or punched, and Sheet (plain or galvanized), straight or mixed carloads	125	122½	120	120	100
64	Bolts, Nuts, Washers and Nut Locks, as follows:—Carriage and Wagon, in boxes or kegs; Machine, Bridge and Lag and Lag Screws; Drift Bolts and Iron Rivets, straight or mixed carloads	125	122½	120	120	100
65	Corrugated, V-Crimped and Roll Cap, Iron Roofing and Siding, and Iron Roofing Tile, straight or mixed car loads.....	125	122½	120	120	100
66	Mining rails, and fastenings for same.....	125	122½	120	120	100
67	Nails and Spikes (not including railroad spikes), cut or wire, N. O. S., in boxes or kegs, actual weight, but not less than 106 pounds per keg.....	125	122½	120	120	100
68	Pipe, cast iron, including connections, not exceeding in quantity 20 per cent of the weight of the Pipe loaded in same car, special release to be signed by shippers relieving carriers from all liability for damage by chafing and breakage; cast iron Water or Gas Service Stop Cock Boxes..	125	122½	120	124	104
69	Pipe, wrought iron, not sheet, including connections, not exceeding in quantity 20 per cent of the weight of the Pipe loaded in same car, special release to be signed by shippers relieving carriers from all liability for damage by chafing or breakage. Pipe slip-joint column; Pipe and Tubes, black (including boiler flues); Pipe, galvanized and corrugated, released...	125	122½	120	124	104
70	Sheet, planished, in metal cases with wooden bottoms NOTE.—When shipped in packages other than above described, class rates will apply.	125	122½	120	120	100
71	Shoes, horse, mule, and ox (including Toe Calks), in boxes or kegs.....	125	122½	120	120	109
72	Wire (fence), Iron or Steel, smooth annealed, No. 12 or heavier, plain or galvanized; barbed, galvanized, or painted; Staples.....	125	122½	120	120	100
73	Jars and Glasses, fruit or jelly, including Tops and Top Fastenings, in packages; O. R. B., minimum weight 26,000 pounds.....	157	154½	152	150	130

Item Number	COMMODITIES, C. L.—West-bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See items 25 and 26	Peoria and Common points. See item 26.	St. Louis and Common Points. See item 26.	St. Paul and Common Points. See item 24.	Missouri River points, etc. See item 23.
74	Liquors—Alcohol, Whisky, Pure Spirits Gin, Brandy, New England Rum, Cologne Spirits, in wood, O.R.L., minimum weight 24,000 pounds	195	190	185	190	160
75	Lumber, except woods of value	90	90	86	86	81
76	Machinery and Machines taking class A rates, in straight car loads, specified under the head of "Machinery and Machines" in current Western Classification (**see also item 77**), including Grain Conveyors and Registers, Shingle Machines, Iron Link Belting, Roller Mills, Pulley Clutches, Shafting (iron), Valves (iron), Water Jackets for smelters, and Wheels (iron gear), Windlasses, Winches and Ship Steerers, mixed carloads; shipments must be fully released; straight or mixed carloads; minimum weight 24,000 pounds	145	141½	137½	137	125
77	Mining and Smelting Machinery (not to include Electrical Machinery of any kind), consisting of the following: Accumulators, hydraulic. Barrels, chlorination. Belting. Blowers, iron rotary. Boilers, steam. Boxes, zinc precipitating. Buckets, ore and elevator. Cable, steel. Cages, mine. Cars, amalgam and ore. Charging Barrows, iron. Clutches. Converters, copper. Conveyors, ore. Coolers and Drying Floors, iron, punched and fitted. Cranes, iron. Crawls. Crushers, ore. Cylinders, roasting. Dogs, landing. Drills, power, including Diamond and equipment other than hand. Dryers, ore. Economizers, fuel. Engines, stationary, and hoists, not including farm or traction engines. Fans, exhaust. Flues, boiler. Furnaces, bullion and ore, and parts thereof. Gates, ore bin. Gears, mill. Iron pipe. Jigs. Machines, and parts thereof, as follows: Bricquetting, ore concentrating and air compressors. Mills, stamp, cyanide, chlorination and parts thereof. Mould Carriages. Moulds, lead and bullion. Pans, amalgamating, settler, agitator and clean-up. Pots, slag and ladles. Presses, filter. Pulverizers, ball. Pumps, not including hand pumps. Roasters. Separators, Classifiers and Sizers, ore. Shafting, iron, finished, including couplings and hangers. Skips, ore and water. Smoke stacks. Tables, concentrating and slime. Tanks, vacuum, cyanide and rolled punched iron sheets and discharge gates for same. Trucks, slag. Vanners. Water Jackets, iron and steel, for Smelting furnaces. Wheels, sheave. Whims. Winches.	145	141½	137½	137	125
78	Matches, of domestic manufacture, in paper or wooden boxes, packed in metallic or wooden cases, O. R. fire and water, minimum weight 24,000 pounds	179	179	179	174	164
79	Meat (fresh), and Dressed Poultry, O. R. weather and delay, P. P. or guaranteed, straight or mixed carloads, minimum weight 20,000 pounds	200	200	200	200	200
80	Mineral Water, O. R. B. and L., P. P. or guaranteed.	90	90	90	90	90
81	Oil—Petroleum and Petroleum Oil Products (as per Western Classification)	153½	153½	153½	153½	133½

Item Number	COMMODITIES, C. L.—West-bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See items 25 and 26.	Peoria and Common Points. See item 26.	St. Louis and Common Points. See item 26.	St. Paul and Common Points. See item 24.	Missouri River points, etc. See item 23.
82	Oilcloth, Floor, and Linoleum, boxed or crated, carrier's convenience, and O. R. B. and C., straight or mixed carloads	175	170	165	165	145
83	Packing House Products, in straight or mixed carloads, minimum weight 26,000 pounds, viz.: Bacon (cured), in bags, barrels, boxes, casks, or crates; Beef (dried), loose, or in sacks, boxes, barrels, casks, or crates; Beef, pickled; Beef and Hog Intestines, uncleaned, in boxes or barrels; Bladders, in boxes or barrels; Cracklings; Cottonseed Foots; Dried Weasands, in boxes or barrels; Grease, in buckets, tubs, pails, or barrels; Hair, Hogs'; Hams, boiled; Hams and Shoulders, cured, in bags, boxes, barrels, crates, or casks; Jelly Glue; Lard, in crocks, buckets, boxes, barrels or casks; Lard (Leaf), packed or in bulk; Lard, in bulk, in tank-cars; Lard Substistutes; †Lard Oil; Meats, canned; Meats, dried or salted, in bags, boxes, barrels, crates, casks, or in bulk; Meats, pickled, in glass; Neats-foot Oil; Oleo Oil, in barrels and tierces; Pigs' Feet, in wood; Pigs' Feet, in bulk, to be loaded and unloaded by owner; Pork, cured, packed; Sausage, dried; Sausage Casings, pickled, in barrels or kegs; Sheepskin Trimmings, green; Stearine; Tails or switches, green; Tallow Oil; Tallow and Tripe, in kegs, barrels, or casks *Applies also from Cedar Rapids, Iowa. NOTE 1—Salt (not exceeding 1000 pounds) may be transported free with car of bulk meat, the amount to be ascertained by weighing the salt remaining in car at destination. NOTE 2—It is understood that rates named above on Packing House Products will not apply on shipments of Dressed Beef or Dressed Pork. NOTE 3—Mixed carloads of Fresh Meat and Packing House Products may be taken at the carload rate on the actual weight of each commodity, subject to a minimum weight of 26,000 pounds with a minimum charge of 20,000 pounds, at the Fresh Meat rate on the entire shipment. In the event charges based as above should exceed what would accrue by using the minimum weight of a straight carload of Fresh Meat (viz.: 20,000 pounds) at the Fresh-Meat rate, and the actual weight of the Packing House Products at the less than carload rates, the lower basis will be accepted; or, if by using the minimum weight of straight carload of Packing-House Products, (viz.: 26,000 pounds) at the Packing House Product rate, and the actual weight of the Fresh Meat at the less than carload rates, the lower basis will be accepted. NOTE 4—See Item 79 for rates on Fresh Meat.	160	160	160	156½	*150
84	Paints, in boxes, kits, barrels, casks, or in cans packed in barrels (but exclusive of Paints or Colors in Tin Tubes), O. R. L.; Putty, in cans, kegs, boxes, or barrels, minimum weight 24,000 pounds	145	142½	140	138	118
85	Paper, Wrapping (Straw, Rag or Manilla), including Tissue Paper cut to size for wrapping fruit; Strawboard Boxes or Cartons (plain or parafined), K. D. straight or mixed carloads	135	132½	130	130	115
86	Paper Bags, straight carloads or in mixed carloads, with Wrapping Paper, as shown in item 85	150	147½	145	145	140

Item Number.	COMMODITIES, C. L.—West-bound IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See items 25 and 26.	Peoria and Common Points. See item 26.	St. Louis and Common Points. See item 26.	St. Paul and Common Points. See item 24.	Missouri River points, etc. See item 23.
87	Paper, Building and Roofing; Strawboard; Wood Pulp-Board; Roofing Cement, Caps and Nails; Felt for Carpet Lining and Felt for Roofing; Pitch Gravel Roofing, Cement Granite and Tar Roofing; straight or mixed carloads	135	132½	130	130	115
88	Paper Hangings, Released, not including Decoration Sets	170	165	160	160	140
89	Rope, all kinds except Wire or Hair	.....	.....	.....	.....	154
90	Salt *Will also apply from Hutchinson, Kas., via A. T & S. F. Ry. or C. R. I. & P. and McPherson, Kas., or Mo. Pac. Ry. and Kanapolis, Kas., Nickerson, Kas., via A. T. & S. F. Ry. and McPherson, Kas., or Mo. Pac. Ry. and Kanapolis, Kas.; Sterling, Kas., via A. T. & S. F. Ry. and McPherson, Kas.; Mo. Pac. Ry. or Kanopolis, Kas.; and Lyons, Kas., via A. T. & S. F. Ry. and McPherson, Kas. or Mo. Pac. Ry. and Kanopolis, Kas., or St. L. & S. F. R. R. and Ellsworth, Kas.; Kingman and Anthony, Kas, via Mo. Pac. Ry. and McPherson, Kas., and U. P. R. R.	100⅓	98⅔	97	100⅓	*85
91	Sash, Doors, and Blinds; Door, Window, and Screen Frames; Door and Window Screens; Carpenters' Mouldings, in the white, for door frames and inside finishing; common Pine Porch Work, Posts and Spindles; O.R.B. and C., minimum weight 24,000 pounds. NOTE—The above provision for Sash and Doors will not apply on Sash and Doors glazed with other than common window glass (not colored or frosted).	90	90	86	84	81
92	Soap, Castile, or Imitation Castile, Common, Ball, and Laundry; Soap Chips and Soap Powders; Washing, Polishing, and Scouring Compounds (not liquid, and will not apply on Lye) and Crystals	130	130	125	120	120
93	STAMPED WARE—Nested, each article made from a single piece of metal, without solder, (not Agate, Granite, or Enameled Ware), in boxes, barrels or crates, minimum weight 24,000 pounds The following articles will be rated as Stamped Ware, viz.: Galvanized Iron Buckets and Tubs; Milk Shipping Cans; Galvanized Iron Wash Bowls and Pans; Iron Ladles, Skimmers, and Cake Turners; Pierced, Square, and Round Pans, nested; Stamped Iron Dripping Pans; Stamped Russia Iron Mining Pans; Tin Broom Locks; Tinned Bucket Ears; Tinned Iron Handles; Tinners' Stamped Trimmings; Tin Scoops, nested; Tubed Cake Pans, nested; Zinc or Tin Can Screws. NOTE 1—Stamped Ware, as above specified, in boxes, barrels, or crates, and Tinware, in boxes, barrels, or crates, in mixed car loads, may be taken at car load rate shown on page 9. NOTE 2—Galvanized Iron Buckets, Tubs, Bowls, and Pans, may be taken nested in packages and securely bound.	190	187½	185	185	164

Item Number	COMMODITIES, C. L.—West-bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See items 25 and 26.	Peoria and Common Points. See item 26.	St. Louis and Common Points. See item 26.	St. Paul and Common Points. See item 24.	Missouri River points, etc. See item 23.
94	Staves and Headings, rough or finished; Hoops and Bolts (not including Tank or Vat Stuff), minimum weight 40,000 pounds	82½	82½	80	80	80
95	Vinegar, O. R. L. and freezing	142	139½	137	135	115
96	Wheelbarrows, K. D., minimum weight 24,000 pounds.	160	156¼	155	152	141
97	WOODEN AND FIBRE WARE as per Western Classification, minimum weight 16,000 lbs	193	190½	188	188	170

Item Number	COMMODITIES, C. L.—East-bound. IN CENTS PER 100 POUNDS. (Except as otherwise provided.) Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See items 25 and 26.	Peoria and Common Points. See item 26.	St. Louis and Common Points. See pages 11 and 14.	St. Paul and Common Points. See item 24.	Missouri River points, etc. See item 23.
98	Cylinder Tank Cars, empty, returned	.....	.....	.....	....	$105 Each.
99	Beer Packages, empty, returned (subject to estimated weights provided in Western Classification), including Empty Beer Bottles, returned, O. R. B.					
	Min. C. L. weight when in refrigerator cars, 12,000 pounds	55	55	55	55	55
	Min. C. L. weight when in other than refrigerator cars, 20,000 pounds	55	55	55	55	55
100	Junk as per Western Classification	72	69½	67	67	50

Item 101. Class Rates between Portland, Ore., and O. R. & N. stations.—The rates shown below will be of assistance in figuring combination of rates to points on the Oregon Railroad & Navigation Company based on the rates published to Portland, Ore., as per Trans-Continental West-Bound Tariff 4-B (T.-C. F. B. I. C. C. No. 319), U. P. G. F. O. No. 8442, O. S. L. No. 1201-U. R., O. R. & N. Co. No. 110 "T. C. A.," as amended or superseded, plus local rates from Portland, Ore., to stations shown:

Index Station No.	BETWEEN PORTLAND, ORE., AND	CLASS RATES IN CENTS PER 100 POUNDS.									
		1st	2d	3d	4th	5th	A	B	C	D	E
	MAIN LINE.										
1	‡*Quarry Spur.....Ore.	10	10	9	8	8	8	6	5	5	5
2	*Clarnie..... "	10	10	9	8	8	8	6	5	5	5
3	Fairview..... "	15	13	12	10	8	10	8	5	5	5
4	Troutdale..... "	15	13	12	10	8	10	8	5	5	5
5	*Corbett..... "	15	13	12	10	8	10	9	7½	6	5
6	*Rooster Rock..... "	15	13	12	10	8	10	9	7½	6	5
7	*Latourelle..... "	15	13	12	10	8	10	10	8	8	6
8	Bridal Veil..... "	15	13	12	10	8	10	10	8	8	6
9	*Oneonta..... "	15	13	12	10	8	12	10	9	9	7
10	‡*Dodson's..... "	15	13	12	10	8	12	10	9	9	7
11	*Warrendale..... "										
12	Bonneville..... "	15	13	12	10	8	12	10	10	10	7½
13	Cascade Locks..... "										
14	*Wyeth..... "	18	14	14	12½	9	13	10	10	10	7½
15	Viento..... "	20	15	15	12½	9	13	10	10	10	7½
16	*Nicolai..... "	20	16	16	12½	9	13	10	10	10	7½
17	‡*Ruthton..... "	20	16	16	12½	9	13	10	10	10	7½
18	Hood River..... "	20	17	17	12½	9	13	12	10	10	7½
19	Mosier..... "										
20	*Rowena..... "	25	20	18	15	10	15	13	12	10	7½
21	Dalles..... "										
22	*Seufert's..... "	28	22	20	17	12	17	14	13	11	8
23	*Fishery..... "	30	24	22	19	13	19	15	14	11	8
24	*Summit..... "	34	27	25	21	14	21	16	14	12	9
25	*Tumwater..... "	37	30	28	23	16	23	18	15	13	10
26	*Celilo..... "	37	30	28	23	16	23	18	15	13	10
27	*Des Chutes..... "	40	32	30	25	18	24	20	16	14	11
28	Biggs..... "	42	35	33	27	20	26	21	17	14	11
29	Grant's..... "	45	37	33	27	20	28	23	17	15	12
30	*Rufus..... "	47	39	33	27	20	30	25	18	16	14
31	*John Day's..... "	53	45	39	32	26	33	28	18	16	14
32	*Squally Hook..... "	58	50	44	37	32	35	29	19	17	15
33	*Quinn's..... "	63	55	49	42	38	38	31	19	17	15
34	*Blalock's..... "	65	60	54	47	40	39	33	19	17	15
35	Arlington..... "	65	65	62	48	40	40	35	21	19	15
36	*Willows..... "	75	74	66	53	44	42	37	23	21	16
37	Heppner Jct..... "	75	74	66	55	47	42	37	24	21	16
	HEPPNER BRANCH.										
38	*Rhea..... "	85	78	67	57	48	43	38	28	21	16
39	*Cecil's..... "	90	80	69	58	49	44	39	29	23	16
40	*Douglas..... "	94	82	70	58	50	45	40	30	25	18
41	Ione..... "	95	86	72	61	52	47	42	30	26	20
42	*Lexington..... "	95	87	73	62	53	48	43	32	26	21
43	Heppner..... "	95	94	75	66	57	52	47	34	27	22
	MAIN LINE										
44	*Castle Rock..... "	75	75	69	57	49	44	39	24	22	16

*No Agent. Freight must be prepaid.
‡Car load freight only will be received or delivered.

ITEM 101—Continued.

Rates Between Portland, Ore., and Stations on O. R. & N.—Continued.

Index Station No.	BETWEEN PORTLAND, ORE., AND	CLASS RATES IN CENTS PER 100 POUNDS. 1st	2d	3d	4th	5th	A	B	C	D	E
	MAIN LINE.										
45	*Coyote.....Ore.	80	80	69	59	49	44	39	24	22	16
46	*Stokes..... "	85	85	70	60	51	46	41	26	23	17
47	Umatilla..... "	90	87	70	60	51	46	41	26	23	17
48	*Maxwell..... "	95	90	75	62	55	50	45	29	25	19
49	*Foster's..... "	97	95	75	62	55	50	45	29	25	19
50	Echo..... "	100	95	75	62	55	50	45	30	25	19
51	*Nolin..... "	103	95	75	65	55	50	45	31	25	19
52	*Yoakum..... "	105	95	75	65	55	50	45	32	25	19
53	*Barnhart..... "	107	95	75	65	55	50	45	32	25	19
54	*Mission..... "	115	99	79	70	60	55	48	34	29	21
55	*Cayuse..... "	117	100	81	72	62	57	50	34	29	21
56	*Thorn Hollow..... "	119	102	85	75	65	58	50	35	29	21
57	Bingham Springs..... "	119	102	85	75	65	58	50	35	29	21
58	*North Fork..... "	123	107	88	78	68	58	50	36	29	21
59	‡*Allen's Spur..... "	125	110	88	78	68	58	50	38	29	21
60	*Huron..... "	125	110	88	78	68	58	50	38	29	21
61	‡*Porter Spur..... "	125	110	88	78	68	58	50	39	29	21
62	Meacham..... "	125	110	88	78	68	58	50	39	29	21
63	‡*Nibley Spur..... "	128	113	90	80	70	60	51	40	30	22
64	‡*Murdock..... "	128	113	90	80	70	60	51	40	30	22
65	Kamela..... "	128	113	90	80	70	60	51	40	30	22
66	‡*Spring Spur..... "	130	120	92	82	72	60	52	42	32	23
67	‡*Steel Spur..... "	130	120	92	82	72	60	52	42	32	23
68	‡*Five Points..... "	135	120	94	82	72	60	52	42	32	23
69	Hilgard..... "	135	120	94	82	72	60	52	42	32	23
70	*Perry..... "	138	123	95	82	72	60	52	43	33	24
71	La Grande..... "	138	123	95	82	72	60	52	43	33	24
	ELGIN BRANCH.										
72	*Island City..... "	141	126	95	82	74	62	54	45	35	26
73	‡*Pierce's Spur..... "	148	131	95	82	75	65	55	46	36	26
74	‡*Conley Siding..... "	148	131	95	82	75	65	55	46	36	26
75	*Alicel..... "	148	131	95	82	75	65	55	46	36	26
76	*Imbler..... "	148	133	95	82	75	65	55	46	36	26
77	Elgin..... "	148	133	95	82	75	65	55	46	36	26
	MAIN LINE.										
78	§*Hot Lake..... "	138	123	95	82	73	60	53	43	33	24
79	‡*Nodine Spur..... "	138	123	95	82	73	60	53	43	33	24
80	Union..... "	138	123	95	82	73	60	53	43	33	24
81	*Telocaset..... "	141	128	95	82	75	60	55	45	35	25
82	North Powder..... "	145	130	95	82	75	60	55	45	35	25
83	‡*Hutchinson..... "	148	133	95	82	75	60	55	46	36	26
84	*Haines..... "	148	133	95	82	75	60	55	46	36	26
85	Baker City..... "	148	133	95	82	75	60	55	46	36	26
86	*Norton..... "	148	133	95	82	75	63	55	46	36	26
87	‡*Encina..... "										
88	Pleasant Valley..... "										
89	*Unity..... "	148	133	95	82	75	65	55	46	36	26
90	Durkee..... "										
91	*Weatherby..... "										
92	*Lime Kiln..... "										

*No Agent. Freight must be prepaid.

‡C. L. freight only will be received or delivered. §L. C. L. freight only will be received or delivered.

Signed for Identification:

James S. Wilson

Of Solicitors for Complainant.

Joseph N. Teal

Of Solicitors for Defendants.

Supplement 31 to I. C. C. 1073.
Cancels Supplement No. 30.

UNION PACIFIC RAILROAD COMPANY.

Supplement No. 31 to U. P. C. F. O. No. 8585.—(25, 27, and 31 include all changes.)

THE TOPEKA & NORTHWESTERN RAILROAD CO. (FX4–1)

OREGON SHORT LINE RAILROAD COMPANY. (FX4–1)

Supplement No. 31 to O. S. L. No. 2402.

DENVER & RIO GRANDE RAILROAD COMPANY. (FX2-226)

Supplement No. 31, D. & R. G. No. 648.

NORTHERN PACIFIC RAILWAY COMPANY.

Northern Pacific Ry. No.—Amends 31 N. P. No. 14127.

CANADIAN PACIFIC RAILWAY. (FX2-9)

(Western Lines.)

GREAT NORTHERN RAILWAY. (FX4–205)

COLORADO MIDLAND RAILWAY COMPANY. (FX3–339)

Supplement No. 31 to C. M. Ry.—Joint Freight Tariff No. 2006.

THE OREGON RAILROAD & NAVIGATION COMPANY. (FX4–3)

Supplement No. 31 to O. R. & N. Co. No. I-126.

——IN CONNECTION WITH——

Atchison, Topeka & Santa Fe Railway. (FX3-116)
Chicago & Alton Railroad. (FX4-18)
Chicago & Eastern Illinois Railroad. (FX3-165)
Chicago Great Western Railway (FX4-30)
Chicago, Indiana & Southern R. R. (FX4-34)
Chicago & North-Western Railway. (FX4-35)
Chicago, Burlington & Quincy Railroad Co. (FX4-140)
Chicago, Milwaukee & St. Paul Railway. (FX4-354-Corr)
Chicago, Rock Island & Pacific Railway. (FX3-304)
Chicago, St. Paul, Minneapolis & Omaha Ry. (FX4-251)
Colorado & Southern Railway. (FX4-33)
Duluth, South Shore & Atlantic Ry. (FX4-27)
Elgin, Joliet & Eastern Railway. (FX4-180)
Green Bay & Western Railroad. (FX4-28)
Illinois Central Railroad. (FX3-149)
Illinois, Iowa & Minnesota Ry. Co. (FX4-457)
Indiana Harbor Belt R. R. (FX4-31-Corr.)
Iowa Central Railway. (FX4-114)
Kansas City Southern Railway. (FX3-165)
Leavenworth, Kansas & Western Ry. (FX4-10)
Minneapolis, St. Paul & Sault Ste. Marie Railway. (FX3-296)
Minneapolis & St. Louis Railroad Co. (FX4-114)
Missouri, Kansas & Texas Railway. (FX4-31)
Missouri Pacific Railway.
Muscatine, North & South Railway. (FX4-34)
St. Joseph & Grand Island Railway. (FX4-4)
St. Louis & San Francisco Railroad. (FX3-6)
St. Louis, Kansas City & Colorado R. R. (FX3-304)
Spokane International Railway.
Toledo, Peoria & Western Railroad Co. (FX3-175)
The Wabash Railroad Co. (FX4-32)
Wisconsin Central Railway. (FX3-296)

JOINT FREIGHT TARIFF

(GOVERNED BY CURRENT WESTERN CLASSIFICATION)

Exhibit C.

——APPLYING ON——

Merchandise and Commodities

U. S. Circuit Court
Filed
May 11, 1908
District of Oregon

——BETWEEN——

Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, Peoria, St. Louis, Missouri River, and Common Points.

——AND STATIONS ON——

OREGON RAILROAD & NAVIGATION CO.

Named in Station Index 3, Page 3 of Tariff and as Amended.

Issued and mailed to I. C. C.
January 29, 1908.

Effective March 5, 1908.
(Except as noted.)

By J. A. MUNROE,

Freight Traffic Manager, { Union Pacific Railroad. / Leavenworth, Kansas & Western Ry. / Topeka & Northwestern R. R.

OMAHA, NEB.

ELMER H. WOOD, G. F. A., Union Pacific R. R., T. & N.-W. R. R. Co., OMAHA, NEB.	**C. J. LANE,** 1st A. G. F. A., Union Pacific R. R., T. & N.-W. R. R. Co., OMAHA, NEB.	**W. H. GARRATT** A. G. F. A., Union Pacific R. R. T. & N.-W. R. R. Co., OMAHA, NEB.	**H. G. KAILL,** A. G. F. A., Union Pacific R. R., T. & N.-W. R. R. Co., KANSAS CITY, MO.
FRED WILD, JR. G. F. A., D. & R. G. R. R. Denver, Colo.	**J. B. BAIRD,** G. F. A., Nor. Pac. Ry. St. Paul, Minn.	**W. P. KENNEY,** A. T. M., Grt. Nor. Ry. St. Paul, Minn.	**H. G. BUSH,** T. M., C. M. Ry. Denver, Colo.
J. A. REEVES, G. F. A., O. S. L. R. R. Co. Salt Lake City, Utah.	**R. B. MILLER,** G. F. A., O. R. & N. Co., Portland, Ore.	**F. W. PETERS,** A. T. M., Can. Pac. Ry. Winnipeg, Man.	**B. W. GREER,** G. F. A. Can. Pac. Ry. Vancouver, B. C.

(M. D.) (8626) (8586)

Item No.	COMMODITIES, C. L.—West-Bound. RATES IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See Items 25 & 26.	Peoria and Common Points. See Item 26.	St. Louis and Common Points See Item 24.	St. Paul and Common Points See Item 24.	Missouri River Points. See Item 23.
45-A Cancels 45	Coal, Hard.....	Cancel	Cancel	Cancel	Cancel	Cancel
46-B Cancels 46 and 46-A	Coal, Blacksmith.....	49	49	49	47½	45
42-A Cancels 42	Cereals and Cereal Products or Preparations, viz: Flour, (Wheat, Rye, Buckwheat or Pancake), Bran, Chopped Corn, Cracked Corn, Pop Corn, Rolled Rye, Rolled Oats, Cracked Wheat, Cerealine, Corn Flake, Farina, Germea, Vitos, Shredded Biscuit, Malta Vita, Grape Nuts, Refined Grits, Brewers' Cerealine, Hominy, Grits, Maizea, Bean Meal, Pea Meal, Corn Meal, Oat Meal, Pearl Barley, Farinose, Brewers' Meal, Brewers' Grits, or Malt, straight or mixed carloads..... NOTE.—Postum Cereal will not be accepted at these rates. Postum Cereal will take rates applying on Coffee and Coffee Substitutes. **Effective Feby. 5, 1908,** in Sup. 30 to I. C. C. No. 1578.	80	80	75	80	70
67-B Cancels 67-A	Nails, (including Horse Nails) and Spikes, (not including Railroad Spikes) cut or wire, (including cement coated) in boxes or kegs..... NOTE.—Estimated weight of 108 pounds per keg will apply on nails only (except cement coated), when shipped in standard kegs. Actual weight will govern on Spikes and cement coated Nails. Wire, Iron or Steel, plain, galvanized, tinned or coppered; Barbed, Staples, Hay Bale Ties, Wire Hoops, Wire Fencing, in Rolls, Stretchers, Steel Stay Guards, Wire Fence Gates, minimum weight 40,000 pounds..... **Effective Feby. 25, 1908,** in Sup. 30 to I. C. C. No. 1578.	125	122½	120	120	100
81-B Cancels 81-A	Oil, Petroleum and its Products as described in the carload section of Western Classification current at time of shipment. Minimum weight in packages 24,000 pounds..... NOTE 1.—Minimum weight and charges on Petroleum and its products, when transported in tank cars, will be based on full gallonage capacity of tank cars multiplied by 6.4 lbs., and for Crude or Fuel Oil 7.4 lbs. per gallon, as provided in Western Trunk Line Joint Circular No. 88, I. C. C. No. 570, U. P. G. F. O. No. 843, as amended or reissued. NOTE 2.—Shipments of Petroleum and its Products in tank cars will only be received when destined to consignees who have storage tanks or other facilities for the prompt unloading and release of tank cars. **Effective Aug. 19, 1907,** in Sup. 28, I. C. C. 1578.	153½	152½	150½	153½	133½

BLURRED COPY

Item No. 104-A Cancels 104.

Rails (Iron and Steel), and Steel Cross Ties, per ton of 2,240 pounds, and Fastenings (Angle Bars, Spikes, Bolts, Nut Locks, Chairs and Tie Plates), per ton of 2,000 pounds, minimum weight 60,000 pounds unless marked capacity of car is less, in which event the marked capacity will govern.

FROM

Chicago, Duluth, Peoria, Mississippi River, St. Paul and Missouri River and Common Points

TO

Stations on the O. R. & N. Co. main line, Lime Kiln, Ore., to Mission, Oregon, inclusive

Rails and Steel Cross Ties, carloads,	Fastenings, carloads,
$15.00 per ton 2,240 pounds.	75 cents per 100 pounds.

NOTE.—Rates on Rails and Steel Cross Ties are per ton of 2,240 pounds and on Fastenings are per ton of 2,000 pounds and may be shipped in mixed carloads at the carload rates provided for each.

Light and Bulky Articles.

In the shipments of light and bulky articles in carloads, each participating carrier will furnish when necessary two or more cars to equalize the loading space of a box car having a cubical capacity of 4,050 cubic feet or a flat car having capacity of 50 lineal feet, cars of such capacity being obtainable for shipment by some of the lines, parties to this tariff.

The provisions of this rule will apply only on carload shipments from one consignor to one consignee shipped in one day and covered by one bill of lading. The first car loaded should contain its full cubical capacity, or as near thereto as the character of the traffic will permit, and the shipment should be billed at the actual weight, but in no case less, in the aggregate, than the established minimum weights provided for in this tariff and supplements thereto.

Effective Aug. 19, 1907. In Sup. 28, I. C. C. No. 1578.

Diversion and Reconsigning Rules.

Cancel the diversion rule as published, after date of cancellation the rules as published in Sup. No. 101 to Cir. U. P. G. F. O. No. 815, Sup. 100, I. C. No. 1570, as amended or superseded will govern.

Effective Nov. 28, 1907. In Sup. 29, I. C. C. No. 1578.

Carload Freight to be Loaded and Unloaded by Owner.

All rates in carloads are subject to the condition that freight shall be loaded and unloaded by the owner.

Effective Feby. 6, 1908, in Sup. 30, I. C. C. No. 1578.

Signed for Identification:

James S. Wilson

Of Solicitors for Complainant.

Joseph N. Teal

Of Solicitors for Defendants.

Supplement No. 27 to I. C. C. No. 1578.

UNION PACIFIC RAILROAD COMPANY.

Supplement No. 27 to U. P. C. F. O. No. 8585.—(25 and 27 includes all changes).

THE TOPEKA & NORTHWESTERN RAILROAD CO.

OREGON SHORT LINE RAILROAD COMPANY.

Supplement No. 27 to O. S. L. No. 2402.

DENVER & RIO GRANDE RAILROAD COMPANY.

Supplement No. 27, D. & R. G. No. 6484.

NORTHERN PACIFIC RAILWAY COMPANY.

Northern Pacific Ry. No.—Amend 27 N. P. No. 14127.

CANADIAN PACIFIC RAILWAY.

GREAT NORTHERN RAILWAY.

COLORADO MIDLAND RAILWAY COMPANY.

Supplement No. 27 to C. M. Ry.—Joint Freight Tariff No. 2006.

THE OREGON RAILROAD & NAVIGATION COMPANY.

Supplement No. 27 to O. R. & N. Co. No. I-138.

—IN CONNECTION WITH—

Atchison, Topeka & Santa Fe Railway Co.
Chicago & Alton Railway.
Chicago & Eastern Illinois Railroad.
Chicago Great Western Railway.
Chicago, Indiana & Southern R. R.
Chicago & North-Western Railway.
Chicago, Burlington & Quincy Railway Co.
Chicago, Milwaukee & St. Paul Railway.
Chicago, Rock Island & Pacific Railway.
Chicago, St. Paul, Minneapolis & Omaha Railway.
Colorado & Southern Railway Company.
Duluth, South Shore & Atlantic Railway.
Elgin, Joliet & Eastern Ry.
Green Bay & Western Railroad.
Illinois Central Railroad.
Iowa Central Railway
Kansas City Southern Railway.
Leavenworth, Kansas & Western Railway.
Minneapolis, St. Paul & Sault Ste. Marie Railway.
Minneapolis & St. Louis Railroad Co.
Missouri, Kansas & Texas Railway.
Missouri Pacific Railway.
Muscatine North & South Railway.
St. Joseph & Grand Island Railway Company.
St. Louis and San Francisco Railroad.
St. Louis, Kansas City & Colorado R. R.
Spokane International Railway.
Toledo, Peoria & Western Railroad Co.
The Wabash Railroad.
Wilmar & Sioux Falls Railway.
Wisconsin Central Railway.

Exhibit D

JOINT FREIGHT TARIFF

(GOVERNED BY CURRENT WESTERN CLASSIFICATION)

—APPLYING ON—

Merchandise and Commodities

—BETWEEN—

Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, Peoria, St. Louis, Missouri River and Common Points.

—AND STATIONS ON—

OREGON RAILROAD & NAVIGATION CO.

U.S. Court
Dist.
May 11 1908
Dist. of Oregon

Rules and Regulations Governing Transportation Index 3, Page 3 of Tariff or as Amended.

Issued and Mailed to I. C. C.
May 10, 1907.

Effective as Noted.

By **J. A. MUNROE,**

Freight Traffic Manager, { Union Pacific Railroad. / Leavenworth, Kansas & Western Ry. / Topeka & North Western R. R. Co.

OMAHA, NEB.

ELMER H. WOOD,
G. F. A., Union Pacific R. R. T. & N.-W. R. R. Co.,
OMAHA, NEB.

FRED WILD, JR.,
G. F. A., D. & R. G. R. R.
Denver, Colo.

C. J. LANE,
1st A. G. F. A., Union Pacific R. R. T. & N.-W. R. R. Co.,
OMAHA, NEB.

J. B. BAIRD,
G. F. A., Nor. Pac. Ry.,
St. Paul, Minn.

J. A. REEVES,
G. F. A., O. S. L. R. R. Co.
Salt Lake City, Utah.

W. H. GARRATT,
A. G. F. A., Union Pacific R. R. T. & N.-W. R. R. Co.,
OMAHA, NEB.

W. W. BROUGHTON,
F. T. M., G. N. W. & S. F. and D. W. & P. Rys.
St. Paul, Minn.

R. B. MILLER,
G. F. A., O. R. & N. Co.,
Portland, Ore.

H. G. KAILL,
A. G. F. A., Union Pacific R. R. T. & N.-W. R. R. Co.,
KANSAS CITY, MO.

H. C. BUSH,
T. M., C. M. Ry.,
Denver, Colo.

(53944) (7,800)

Light and Bulky Articles Requiring 50-foot Cars.

Cancel rule on Page 5 of tariff, which authorizes the use of two ordinary cars when one fifty-foot car is ordered by shipper and carriers unable to furnish.

Effective June 14, 1907.

ITEM 17-A, CANCELS 17. **Stopping to Load or Unload in Transit.**—Carload rates will apply only to full carload shipments from one consignor in one day at initial point of shipment, consigned and to be delivered to one consignee at one destination. Less than full carloads will be subject to the less than carload rates, but not to exceed charges for full carload. Cars will not be allowed to be stopped in transit at any point intermediate to complete loading or to partly unload at the rates published in this tariff. All carload shipments so stopped will be subject to the rate to and from the point at which the stop is made.

Add representation to:
Canadian Pacific Railway.
Minneapolis, St. Paul & Sault Ste Marie Railway.
Spokane International Railway.

Rates named in tariff will apply via Canadian Pacific Railway, Spokane International Ry., and Oregon Railroad and Navigation Co., via Kingsgate, B. C., and Spokane, Wash., or via M. St. P. & S. S. M. Ry., Postal, N. D., C. P. Ry., Kingsgate, B. C., Spokane International Ry., Spokane and O. R. & N. Co.

Via above routes Missouri River rates will not apply from points south of St. Paul, Minn.

Effective May 1, 1907. (Reissue)
Acct. opening of route via new line.
Authy. I. C. C. Circular No. 7-A.

Item No.	COMMODITIES, C. L.—West-Bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See Items 25 and 26	Peoria and Common Points. See Item 26.	St. Louis and Common Points. See Item 24.	St. Paul and Common Points. See Item 24.	Missouri River points, etc. See Item 23.
106 New	Stoves, Furnaces, Ranges, Heating Apparatus and Stove Furniture (taking 5th class C. L. under Current Western Classification) straight C. L. or in such mixed C. L. as authorized by Western Classification.....	†1.75	1.75	1.75	1.60	1.60

† From Duluth, Minn., $1.70 per 100 pounds.

Effective May 15, 1907.
Acct. combination of local rates.
Authy. I. C. C. Tariff Circular 7-A.

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Ex E

UNION PACIFIC RAILROAD COMPANY.

Supplement No 25 to U. P. C. F. O. No. 8585 — (Includes all changes).

THE TOPEKA & NORTHWESTERN RAILROAD CO.

OREGON SHORT LINE RAILROAD COMPANY.

Supplement No. 25 to O. S. L. No. 2402.

DENVER & RIO GRANDE RAILROAD COMPANY.

Supplement No. 25, D. & R. G. No. 648-A

NORTHERN PACIFIC RAILWAY COMPANY.

Northern Pacific Ry. No.—Amend 25 N. P. No. 14127

GREAT NORTHERN RAILWAY.

COLORADO MIDLAND RAILWAY COMPANY.

Supplement No. 25 to C. M. Ry.—Joint Freight Tariff No. 2006.

THE OREGON RAILROAD & NAVIGATION COMPANY.

Supplement No. 25 to O. R. & N. Co. No. J-138.

——IN CONNECTION WITH——

Atchison, Topeka & Santa Fe Railway
Chicago & Alton Railroad.
Chicago & Eastern Illinois Railroad.
Chicago, Great Western Railway.
Chicago & North-Western Railway.
Chicago, Burlington & Quincy Railway Co.
Chicago, Milwaukee & St. Paul Railway.
Chicago, Rock Island & Pacific Railway.
Chicago, St. Paul, Minneapolis & Omaha Railway.
Colorado & Southern Railway Company.
Duluth, South Shore & Atlantic Railway.
Elgin, Joliet & Eastern Ry.
Green Bay & Western Railroad.
Illinois Central Railroad.
Iowa Central Railway.
Kansas City Southern Railway.
Leavenworth, Kansas & Western Railway Company.
Minneapolis & St. Louis Railroad Co.
Missouri, Kansas & Texas Railway.
Missouri Pacific Railway.
Muscatine, North & South Railroad.
St. Joseph & Grand Island Railway Company.
St. Louis & San Francisco Railroad.
St. Louis, Kansas City & Colorado R. R.
Toledo, Peoria & Western Railroad Co
The Wabash Railroad.
Wilmar & Sioux Falls Railway.
Wisconsin Central Ry.

JOINT FREIGHT TARIFF

(Governed by Current Western Classification)

Exhibit E Ex. E

—APPLYING ON—

Merchandise and Commodities

—BETWEEN—

Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, Peoria, St. Louis, Missouri River and Common Points.

—AND STATIONS ON—

OREGON RAILROAD & NAVIGATION CO.

U. S. Court
Filed
May 11 1908
Geo. W. Sweet
District Attorney

Distance Tariff Index 3, Page 3 of Tariff or as Amended.

Issued and Mailed to I. C. C.
January 24, 1907.

Effective February 26, 1907.
(Except as noted.)

By J. A. MUNROE,

Freight Traffic Manager, { Union Pacific Railroad. Leavenworth, Kansas & Western Ry. Topeka & North Western R. R. Co.
OMAHA, NEB.

ELMER H. WOOD,
G. F. A., Union Pacific Railroad,. T. & N.-W. R. R. Co.,
Omaha, Neb.

C. J. LANE,
1st A. G. F. A., Union Pacific Railroad T. & N.-W. R. R. Co
Omaha, Neb.

W. H. GARRATT,
A. G. F. A., Union Pacific Railroad, T. & N.-W. R. R. Co.,
Omaha, Neb.

H. G. KAILL,
A. G. F. A., Union Pacific Railroad, T. & N.-W. R. R. Co.,
Kansas City, Mo.

FRED WILD Jr.,
G. F. A., D. & R. G. R. R.
Denver, Colo.

J. B. BAIRD,
G. F. A., Nor. Pac. Ry.,
St. Paul, Minn.

W. W. BROUGHTON,
F. T. M., G. N. W. & S. F. and D. W. & P. Rys.
St. Paul, Minn.

H. C. BUSH,
T. M., C. M. Ry.,
Denver, Colo.

J. A. REEVES,
G. F. A., O. S. L. R. R. Co.
Salt Lake City, Utah.

E. B. MILLER,
G. F. A., O. R. & N. Co.,
Portland, Ore.

The proper officers of the above-named roads will certify to the Interstate Commerce Commission their concurrence in the provisions of this issue.

List of Stations Named in this Supplement.

STATIONS.		Index No.
Alcel	Ore.	121
Allens	"	105
Arlington	"	79
Baker City	"	132
Barnett	"	38–159
Barnhart	"	99
Biggs	"	72
Bingham Springs	"	103
Blalocks	"	78
Bonneville		9–57
Bourbon	"	32–152
Bridal Veil	"	13–62
Cascade Locks	"	8–58
Castle Rock	"	89
Cayuse	"	101
Cecils	"	83
Celilo	"	70
Clarno	"	19–46
Clem	"	40–161
Condon	"	43–164
Conley	"	120
Corbett	"	16–49
Coyote	"	90
Des Chutes	"	71
De Moss	"	28–148
Dodsons	"	11–54
Durkee	"	137
Echo	"	96
Eddy	"	35–156
Elgin	"	124
Encina	Ore.	134
Erskinville	"	30–150
Fairview	"	18–47
Five Points	"	114
Fosters	"	95
Fruit	"	91
Gibsons	"	21–141
Glover	"	118
Grants	"	73
Grass Valley	"	31–151
Gwendolen	"	42–163
Haines	"	131
Hay Cannon Jct	"	26–146
Heppner	"	88
Heppner Jct	"	81
Hermiston	"	94
Hilgard	"	115
Hood River	"	3–63
Hot Lake	"	125
Huron	"	106
Hutchinson	"	130
Imbler	"	122
Ione	"	85
Irrigon	"	92
Island City	"	118
John Days	"	75
Jordon	"	86
Kamela	"	111
Kent	"	153
Klondyke	"	24–47
La Grande	Ore.	117
La Tourelle	"	14–51
Lexington	"	87
Lime	"	140
McDonalds	"	27–147
Meacham	"	108
Menominee	"	5–61
Mikkalo	"	39–160
Millers	"	56
Mission	"	100
Montavilla	"	44
Morgan	"	84
Moro	"	29–149
Mosier	"	2–64
Murdocks	"	110
Nelsons	"	138
Nibley	"	109
Nodine	"	126
Nolen	"	97
North Fork	"	104
North Powder	"	129
Norton	"	133
Oneonta	"	12–53
Perry	"	116
Pierces	"	119
Pleasant Valley	"	135
Porter	"	107
Quarry	"	20–45
Quinton	"	77
Rhea	"	82
Rhinehart	Ore.	123
Rock Creek	"	37–158
Rooster Rock	"	15–50
Rowena	"	1–65
Rufus	"	74
Ruthton	"	4–62
Sandon	"	145
Seuferts	"	67
Shanlko	"	34–155
Shutlers	"	36–157
Sinks	"	22–142
Speece	"	41–162
Spring	"	112
Squally Hook	"	76
Summit	"	25–68
Telocasset	"	128
The Dalles	"	66
Thorn Hollow	"	102
Troutdale	"	17–48
Tumwater	"	69
Umatilla	"	93
Union	"	127
Unity	"	136
Viento	"	6–60
Warrendale	"	10–55
Wasco	"	23–143
Weatherby	"	139
Willows	"	80
Wilcox	"	33–154
Wyeth	"	7–59
Yoakum	"	98

APPLICATION OF RATES AND ROUTES.

Item 23-D amends No. 23.

MISSOURI RIVER COMMON POINTS.

For Routing, see Item 27.

Missouri River common point rates named herein will apply (unless otherwise specified.)

—TO OR FROM—

Sioux City, Council Bluffs, Iowa; Omaha, Neb., St. Joseph, Kansas City, Sugar Creek, Mo.; Atchison, Leavenworth, Kas.;

Item 23-A amends No. 23.

ROAD	
14 "Frisco System" St. L. & S. F. R. R.	All stations in Kansas. (See Item 27-A. Sec. XVI.)

Item 24-A amends 24. **St Paul, Minneapolis and Minnesota Transfer Group.**

ROAD	TO OR FROM
2 C. M. & St. P. Ry.	St. Paul, Minneapolis and Minnesota Transfer, Minn., also Sioux Falls, S. D. (See Item 28, Sec. II.)

Item 27-A amends No. 27.

ROAD	TO OR FROM	VIA	IN CONNECTION WITH
XVI "Frisco System" St. L. & S. F. R. R.	(Points as per Item 23-A 14, as follows:) Burton, Kas., to Ellsworth, Kas., Inclusive.	Medora, Kas.	Chicago, Rock Island & Pacific Ry. routing beyond all Colorado Junctions to be as per Item 27, Section V.
	East of Burton, Kas., to Bruce and Sherwin, Kas., Inclusive.	Wichita, Kas.	
	South of Beaumont, Kas.		
	All other stations in Kansas.	Kansas City, Mo.	

Effective October 12, 1904. (Reissue.)

ADD: Item 23-B amends No. 23.

ROAD	
I-A A. T. & S. F. Ry.	All stations on A. T. & S. F. Ry., in Kansas, also Superior, Neb. (See Item 27-B, Sec. I-A.)

Item 27-B amends No. 27.

ROAD	TO OR FROM	VIA	IN CONNECTION WITH
I-A. A. T. & S. F. Ry.	(Points as per Item 23-B, I-A.)	Denver, Colo.	Union Pacific Railroad, Granger, Oregon Short Line Railroad

Effective December 14, 1904. (Reissue.)

Add representation to The Topeka & Northwestern Railroad Co., application of rates and routing as shown below.

ADD: Item 23-C amends No. 23.

ROAD	
14 The Topeka and Northwestern Railroad Co.	All stations on The Topeka & Northwestern Railroad Co. (See Item 27-C, Section XVI)

Item 27-C amends No. 27.

ROAD	TO OR FROM	VIA	IN CONNECTION WITH
XVI T.& N.W.R.R.Co.	Points as per Item 23-C-14.	Menoken, Kas.	U.P.R.R. Granger, Wyo., and O.S.L.R.R. Co. or U.P.R.R. Denver, Colo., and D. & R. G. R. R. or †Colo. Mid. Ry. and D. & R. G. R. R.

† In Connection with A. T. & S. F. Ry or C. & S. Ry.

Effective February 5, 1908, account New Stations. (Reissue.)

Item 27-A amends 27: Correct routing instructions in Item No. 27 to show point of interchange between O. S. L. R. R. and D. & R. G. R. R. to be Salt Lake City, Utah, instead of Ogden, Utah, as now shown.

Effective with Tariff.

ADD--

Charge for Replenishing Ice on Carload Freight Shipped under Refrigeration:

In addition to regular tariff rate to points specified in above tariff a charge of $13.00 per car, regardless of weight, will be made for replenishing ice west of the Missouri River on carload freight in transit shipped under refrigeration, whether originating at Missouri River common points or intermediate territory or east of the Missouri River.

Shipper is required to furnish the initial icing and deliver car to initial carrier with ice boxes well filled, each carrier to replenish in transit as may be necessary, and see that tanks are in good condition and well filled with ice when car is delivered to its connection. Ice replenishing to include ice or combination of salt with ice. This charge must be shown on the waybill and will divide between interested roads west of the Missouri River on basis of standard percentages.

When shipper delivers car under refrigeration with specinc notice to carrier not to be reiced in transit, such notation must be shown on the waybill, and in such case no additional charge will be made.

Effective January 4, 1904. (Reissue.)

Make following Changes:

On title page of Tariff I. C. C. No. 1578 should supersede conflicting portions of I. C. C. No. 1137.

Effective April 18, 1904. (Reissue.)

On title page of Tariff O. S. L. No. 1232 U. R. should supersede conflicting portions of O. S. L. No. 312 U. R.

Effective April 18, 1904. (Reissue.)

Station Index No. 3: Index No. 84 *Haines, Ore., should read Haines, Ore.

Item No. 101: Index No. 84 *Haines, Ore., should read Haines, Ore.

Effective April 18, 1904. (Reissue.)

*No. Agent. Freight must be prepaid.

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ITEM NOS.	COMMODITIES, C. L.—West-Bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See Items 25 & 26.	Peoria and Common Points. See Item 26.	St. Louis and Common Points. See Item 24.	St. Paul and Common Points See Item 24.	Missouri River points, etc. See Item 22.
32-A Cancels 32	Agricultural Implements (except hand):— Windmills and articles classified as vehicles in Western Classification, (except Automobiles Hearses, and Children's Vehicles), and parts thereof, straight or mixed carloads, minimum weight 20,000 lbs. †Will apply from Burlington...Iowa, Muscatine...." , Davenport...." , Rock Island...Ill., Moline...." , Port Byron...Ill., Cordova...." , Fulton...." , Clinton...Iowa, Lyons...." , Sabula...Iowa, Savanna...Ill., Keithsburg...." , New Boston...."	165	165	165 †162	165	145
41-A Cancels 41	Canned Goods, viz.:— Preserved Fish, Fruits, Meats (including potted or deviled), Vegetables, Soups, Breads, Condensed Milk, Puddings and Sardines in hermetically sealed tin cans, boxed, O. R. weather. (See also Condensed Milk, Item 49.) Effective April 27, 1905. (Reissue)	145	142½	140	138	130
56-A Cancels 56	Bedsteads (iron), Cribs (iron), Institution Beds (iron), plain or with brass trimmings, K. D. released Effective February 23, 1904. (Reissue)	145	141½	137½	137½	125
60-C Cancels 60-B	Glucose, in barrels; Glucose Jelly, in kegs, kits or pails, Syrup (Corn, Glucose and Maple) and Molasses, O. R. L., Rel., straight or mixed carloads Effective November 24, 1906. (Reissue)	110	110	110	97½	97½
66-A Cancels 66	Mining Rails, and fastenings for same After date of cancellation Western Classification and class rates will govern, unless combination of locals on Portland, Ore., would give a lower basis. Effective September 13, 1904. (Reissue)	Cancel rates.				
68-C Cancels 68-B	Pipe, cast iron, including connections, not exceeding in quantity 20 per cent. of the weight of the Pipe loaded in same car, special release to be signed by shippers relieving carriers from all liability for damage by chafing and breakage; cast iron Water or Gas Service Stop Cock Boxes Effective March 24, 1905. (Reissue)	119	116½	114	119	104
69-C Cancels 69-B	Pipe, wrought iron, not sheet, inclnding connections, not exceeding in quantity 20 per cent. of the weight of the Pipe loaded in same car, special release to be signed by shippers, relieving carrier from all liability for damage by chafing or breakage. Pipe slip-joint column; Pipe and Tubes, black, (including boiler flues); Pipe, galvanized and corrugated, released Effective March 24, 1905. (Reissue)	119	116½	114	119	104

ITEM NOS.	COMMODITIES, C. L.—West-Bound. IN CENTS PER 100 POUNDS. Minimum Weight 30,000 Pounds, Unless Otherwise Specified.	Chicago, Duluth and Common Points. See Items 25 & 26.	Peoria and Common Points. See Item 26.	St. Louis and Common Points. See Item 24.	St. Paul and Common Points. See Item 24.	Missouri River Points, etc. See Item 23.
72-A Cancels 72	Wire, Iron, galvanized or coppered, plain or barbed, including staples, Woven Wire Fence, Steel Stay Guards, Stretchers, Hay Bale Ties and Wire Hoops, straight or mixed carloads..... Effective December 4, 1908. (Reissue)	125	122½	120	120	100
76-A Cancels 76	Machinery and Machines taking Class A rates, in straight carloads, specified under the head of "Machinery and Machines" in Current Western Classification, except Scrapers and Road Making Machinery, (**see also Item 77**), including Grain Conveyors and Registers, Shingle Machines, Iron Link Belting, Roller Mills, Pulley Clutches, Shafting (iron), Valves (iron), Water Jackets for smelters and Wheels, (iron gear), Windlasses, Winches and Ship Steerers, shipments must be fully released; straight or mixed carloads; minimum weight 24,000 pounds ..... Effective April 18, 1904. (Reissue)	145	141½	137½	137	125
81-A Cancels 81	Oil, Petroleum and its Products as described in the carload section of Western Classification current at time of shipment ..... NOTE 1. Minimum weight and charges on Petroleum and its products, when transported in tank cars, will be based on full gallonage capacity of the tank cars multiplied by 6.4 lbs., and for Crude Oil 7.4 lbs. per gallon, as provided in Western Trunk Line Joint Circular No. 88, I. C. C. No. 570, U. P. G. F. O. No. 843, as amended or reissued. NOTE 2. Shipments of Petroleum and its Products in tank cars will only be received when destined to consignees who have storage tanks or other facilities for the prompt unloading and release of tank cars.	153½	152½	150½	153½	133½
88-B Amends 88	Packing House Products, in straight or mixed carloads ..... Cancel Note 3 of item and substitute the following: Mixed carloads of Fresh Meat and Packing House Products may be taken at actual weight and the carload rate to be applied on each commodity loaded, subject to a minimum of 20,000 pounds at the Fresh Meat rate. Effective July 24, 1905. (Reissue)					
88-C Amends 88	Packing House Products, in straight or mixed carloads ..... †Applies also from Ottumwa, Iowa. Effective April 10, 1909. (Reissue)	.....	.....	.....	.....	†1.50
95-A Cancels 95	Vinegar, O. R. L. and freezing..... Effective October 27, 1908. (Reissue)	135	132½	130	130	115
102	Road Making Machines, Road Rollers, Road Plows, Drag Scrapers, Wheeled Scrapers, Dump Carts, Dump Wagons, Portable Engines, Rock Crushers, Wheelbarrows, Street Sprinklers and Street Sweepers, in mixed carloads ..... Effective April 18, 1904. (Reissue)	165	165	165	165	145
103	Potatoes and Onions, straight or mixed carloads, minimum weight 30,000 pounds ..... Effective February 23, 1908. (Reissue)	.....	.....	.....	.....	60

Item No. 104.

Rails (Iron and Steel), and Steel Cross Ties, per ton of 2,440 pounds, and Fastenings (Angle Bars, Spikes, Bolts, Nut Locks, Chairs and Tie Plates), per ton of 2,000 pounds, minimum weight 60,000 pounds unless marked capacity of car is less, in which event the marked capacity will govern.

FROM

Chicago, Duluth, Peoria, Mississippi River, St. Paul and Missouri River and Common Points

TO

Stations on the O. R. & N. Co. main line, Lime Kiln, Ore., to Mission, Oregon, inclusive.

Rails and Steel Cross Ties, carloads,	Fastenings, carloads,
$15.00 per ton 2,240 pounds.	75 cents per 100 pounds.

NOTE.—Rates on Rails and Steel Cross Ties are per ton of 2,240 pounds and on Fastenings are per ton of 2,000 pounds and may be shipped in mixed carloads at the carload rates provided for each.

Effective January 1, 1907. (Reissue)

Cancel through rates provided in tariff to the following stations on the Oregon Railroad & Navigation Co.:

Bonneville	Ore.	Hood River	Ore.	Rowena	Ore.
Bridal Veil	"	Latourelle	"	Ruthton	"
Cascade Locks	"	Mosier	"	Troutdale	"
Clarnie	"	Nicolai	"	Viento	"
Corbett	"	Oneonta	"	Warrendale	"
Dodson's	"	Quarry Spur	"	Wyeth	"
Fairview	"	Rooster Rock	"		

After date of cancellation through rates to or from above named stations will be based on sum of local rates to or from The Dalles, Ore., except that where the rate to or from point of origin added to the rate to or from Portland, Ore., makes lower through rate, such lower through rate will govern.

For local rates between Portland, Ore., and above named stations see page 9 of this supplement.

The local rates between The Dalles, Ore., and above named stations are shown below:

Station Nos.	BETWEEN THE DALLES, ORE., AND	CLASS RATES IN CENTS PER 100 POUNDS.									
		1st	2d	3d	4th	5th	A	B	C	D	E
1	*Rowena ..... Ore.	14	12	10	8	7	7	6	4	4	3
2	Mosier ..... "	18	15	13	11	9	9	7	5	5	4
3	Hood River ..... "	25	20	18	15	10	13	10	8	6	5
4	†*Ruthton ..... "	25	20	18	15	10	13	10	8	6	5
5	*Menominee ..... "	25	20	18	15	10	14	11	8	7	6
6	Viento ..... "	25	20	18	15	10	14	11	8	7	6
7	*Wyeth ..... "	25	20	18	15	10	15	12	9	8	6
8	Cascade Locks ..... "	25	20	18	15	10	15	13	11	9	7
9	Bonneville ..... "	25	20	18	15	10	15	13	12	10	7
10	*Warrendale ..... "	25	20	18	15	10	15	13	12	10	7
11	†*Dodson's ..... "	25	20	18	15	10	15	13	12	10	7
12	*Oneonta ..... "	25	20	18	15	10	15	13	12	10	7
13	Bridal Veil ..... "	25	20	18	15	10	15	13	12	10	7
14	*Latourelle ..... "	25	20	18	15	10	15	13	12	10	7
15	*Rooster Rock ..... "	25	20	18	15	10	15	13	12	10	7
16	*Corbett ..... "	25	20	18	15	10	15	13	12	10	7
17	Troutdale ..... "	25	20	18	15	10	15	13	12	10	7
18	Fairview ..... "	25	20	18	15	10	15	13	12	10	7
19	*Clarnie ..... "	25	20	18	15	10	15	13	12	10	7
20	†*Quarry ..... "	25	20	18	15	10	15	13	12	10	7

*No Agent. Freight must be prepaid.

†Carload freight only will be received or delivered.

Cancel Item 22 as provided on page 9 and substitute the following:

Item No. 22-B.—The Shaniko Branch is in operation between Biggs, Ore., and Shaniko, Ore. Through rates to or from stations on that branch will be based on sum of local rates to or from Biggs, Ore. except that where the rate to or from point of origin added to the rate to or from Portland, Ore., makes a lower through rate, such lower rate will govern.

The local rates between Biggs, Ore., and stations on Shaniko Branch are shown below:

Station Nos.	BETWEEN **BIGGS, OREGON,** AND	CLASS RATES IN CENTS PER 100 POUNDS.									
		1st	2d	3rd	4th	5th	A	B	C	D	E
21	*Gibsons ..... Ore.	10	9	7	6	5	5	4	3	3	2
22	*Sinks ..... "	14	12	10	8	7	7	6	4	4	3
23	Wasco ..... "	14	12	10	8	7	7	6	4	4	3
24	*Klondyke ..... "	18	15	13	11	9	9	7	5	5	4
25	*Summit ..... "	22	19	15	13	11	11	9	7	6	4
26	†*Hay Canon Jct ..... "	22	19	15	13	11	11	9	7	6	4
27	*McDonalds ..... "	25	21	18	15	13	13	10	8	6	5
28	*DeMoss ..... "	25	21	18	15	13	13	10	8	6	5
29	Moro ..... "	28	24	20	17	14	14	11	8	7	6
30	*Erskinville ..... "	28	24	20	17	14	14	11	8	7	6
31	Grass Valley ..... "	34	29	24	20	17	17	14	10	9	7
32	*Bourbon ..... "	40	34	28	24	20	20	16	12	10	8
33	*Wilcox ..... "	44	37	31	26	22	22	18	13	11	9
34	Shaniko ..... "	48	41	34	29	24	24	19	14	12	10

Item No. 105.—The Condon Branch is in operation between Arlington, Ore., and Condon, Ore. Through rates to or from stations on that branch will be based on sum of local rates to or from Arlington, Ore., except that where the rate to or from point of origin added to the rate to or from Portland, Ore., makes a lower through rate, such lower rate will govern.

The local rates between Arlington, Ore., and stations on the Condon Branch are shown below:

Station Nos.	BETWEEN **ARLINGTON, OREGON,** AND	CLASS RATES IN CENTS PER 100 POUNDS.									
		1st	2d	3rd	4th	5th	A	B	C	D	E
35	*Eddy ..... Ore.	10	9	7	6	5	5	4	3	3	2
36	*Shutler's ..... "	14	12	10	8	7	7	6	4	4	3
37	*Rock Creek ..... "	22	19	15	13	11	11	9	7	6	4
38	*Barnett ..... "	22	19	15	13	11	11	9	7	6	4
39	*Mikkalo ..... "	25	21	18	15	13	13	10	8	6	5
40	*Clem ..... "	28	24	20	17	14	14	11	8	7	6
41	*Speece ..... "	31	26	22	19	16	16	12	9	8	6
42	*Gwendolen ..... "	34	29	24	20	17	17	14	10	9	7
43	Condon ..... "	37	31	26	22	19	19	15	11	9	7

Minimum Charge Between Points in Oregon.

The minimum charge for any single shipment will be the charge for 100 lbs. at the rate to which commodity belongs. In case shipment is composed of more than one class of freight, the minimum charge will be the charge for 100 lbs. of the article taking the highest rate.

Exception: In no case will minimum charge be less than 25 cents, nor more than the charge for 100 lbs. at second-class rate, unless actual weight at actual rate makes more.

*No Agent. Freight must be prepaid.

†Carload freight only will be received and delivered.

Item 101-B Cancels Item 101.—**Class Rates between Portland, Ore., and O. R. & N. stations.**—The rates shown below will be of assistance in figuring combination of rates to points on the Oregon Railroad & Navigation Company based on the rates published to Portland, Ore., as per Trans-Continental West-Bound Tariff 4-C (T.-C. F. B. I. C. C. No. 376), U. P. G. F. O. No. 8650, O. S. L. No. 2406, O. R. & N. Co. No. 131 "T. C. A." as amended or superseded, plus local rates from Portland, Ore., to stations shown:

Station Nos.	BETWEEN PORTLAND, ORE. AND	CLASS RATES IN CENTS PER 100 POUNDS.									
		1st	2d	3d	4th	5th	A	B	C	D	E
44	†*Montavilla ..... Ore.										
45	†*Quarry ..... "	10	9	8	7	7	7	6	4	4	3
46	*Clarnie ..... "										
47	Fairview ..... "	15	13	12	10	8	9	7	5	5	4
48	Troutdale ..... "	15	13	12	10	8	10	8	5	5	4
49	*Corbett ..... "	15	13	12	10	8	10	9	7	6	5
50	*Rooster Rock ..... "	15	13	12	10	8	10	9	7	6	5
51	Latourelle ..... "	15	13	12	10	8	10	10	8	7	6
52	Bridal Veil ..... "	15	13	12	10	8	10	10	8	7	6
53	*Oneonta ..... "	15	13	12	10	8	12	10	9	8	6
54	†*Dodson's ..... "	15	13	12	10	8	12	10	9	9	7
55	*Warrendale ..... "										
56	†*Miller's ..... "										
57	Bonneville ..... "	15	13	12	10	8	12	10	10	9	7
58	Cascade Locks ..... "										
59	Wyeth ..... "	18	15	13	12	9	13	10	10	10	7
60	*Viento ..... "	20	16	14	12	9	13	10	10	10	7
61	*Menominee ..... "	20	16	14	12	9	13	10	10	10	7
62	†*Ruthton ..... "	20	16	14	12	9	13	10	10	10	7
63	Hood River ..... "	20	17	15	12	9	13	12	10	10	7
64	Mosier ..... "										
65	*Rowena ..... "	25	20	18	15	10	15	13	12	10	7
66	The Dalles ..... "										
67	*Seuferts ..... "	27	22	20	17	12	15	13	12	10	7
68	*Summit ..... "	30	25	23	19	14	16	14	12	10	7
69	*Tumwater ..... "	34	28	25	21	16	16	15	12	10	7
70	*Celilo ..... "	34	28	25	21	16	16	15	12	10	7
71	*Des Chutes ..... "	38	32	28	23	18	18	16	12	10	8
72	Biggs ..... "	42	35	30	25	21	21	17	13	11	8
73	Grants ..... "	45	38	32	27	22	22	18	14	11	9
74	*Rufus ..... "	47	40	33	28	23	23	19	14	12	9
75	*John Day's ..... "	51	43	36	31	24	24	21	16	13	11
76	*Squally Hook ..... "	55	46	39	34	26	26	22	17	14	11
77	*Quinton ..... "	59	49	41	35	27	27	24	18	15	12
78	*Blalock's ..... "	62	52	44	37	29	29	25	19	16	13
79	Arlington ..... "	65	55	46	39	31	31	26	20	16	13
80	*Willows ..... "	70	60	50	43	33	33	28	21	18	14
81	Heppner Junction .... "	70	60	50	43	33	33	28	21	18	14
82	*Rhea ..... "	75	63	53	45	35	37	30	23	19	15
83	*Cecil's ..... "	77	64	54	46	36	40	31	23	19	15
84	*Morgan ..... "	79	66	55	47	37	42	33	24	20	16
85	Ione ..... "	83	69	58	50	39	44	35	25	21	17
86	*Jordan ..... "	83	69	58	50	39	44	35	26	21	18
87	*Lexington ..... "	87	73	61	52	41	46	37	28	23	19
88	Heppner ..... "	89	74	62	53	42	47	39	30	25	20
89	*Castle Rock ..... "	75	63	53	45	35	35	30	23	19	15
90	*Coyote ..... "	78	65	55	47	37	37	32	24	20	16

*No Agent. Freight must be prepaid.
†Carload freight only will be received or delivered.

TORN PAGE

Station Nos.	BETWEEN PORTLAND, ORE. AND	CLASS RATES IN CENTS PER 100 POUNDS.									
		1st	2d	3d	4th	5th	A	B	C	D	E
91	*Fruit..... Ore.	80	67	56	48	38	38	32	24	20	16
92	Irrigon..... "	83	69	58	50	39	39	33	25	21	17
93	Umatilla..... "	85	71	60	51	40	40	34	26	21	17
94	*Hermiston..... "	89	74	62	53	42	42	36	27	22	18
95	*Foster's..... "	91	76	64	55	43	43	36	27	23	18
96	Echo..... "	93	78	65	56	44	44	37	28	23	19
97	*Nolin..... "	95	80	67	57	45	45	38	29	24	19
98	*Yoakum..... "	97	81	68	58	46	46	39	29	24	19
99	*Barnhart..... "	99	83	69	59	47	47	40	30	25	20
100	*Mission..... "	105	88	74	63	50	50	42	32	26	21
101	*Cayuse..... "	107	90	75	64	51	51	43	32	27	22
102	*Thorn Hollow..... "	109	91	76	65	52	52	44	33	27	22
103	Bingham Springs..... "	111	93	78	67	53	53	44	33	28	22
104	*North Fork..... "	115	97	81	68	55	55	46	35	29	23
105	†*Allen's..... "	118	99	82	70	56	56	47	36	30	24
106	*Huron..... "	119	100	83	71	57	57	48	36	30	24
107	†*Porter..... "	121	102	85	73	58	58	48	36	30	24
108	Meacham..... "										
109	†*Nibley..... "	123	103	86	74	59	59	49	37	31	25
110	†*Murdock's..... "										
111	Kamela..... "	125	105	88	75	60	60	50	38	31	25
112	†*Spring..... "	127	107	89	76	61	60	51	38	32	25
113	†*Glover..... "										
114	†*Five Points..... "	129	108	90	77	62	60	52	39	32	26
115	Hilgard..... "										
116	*Perry..... "	131	110	92	79	63	60	52	39	33	26
117	La Grande..... "	133	114	94	80	64	60	52	42	33	26
118	*Island City..... "	133	114	94	80	64	62	54	43	35	26
119	†*Pierce's..... "	134	114	95	80	65	65	54	43	36	26
120	†*Conley..... "	135	114	95	80	65	65	55	43	36	26
121	*Alicel..... "	135	115	95	80	65	65	55	43	36	26
122	Imbler..... "	135	115	95	80	65	65	55	43	36	26
123	*Rhinehart..... "	135	117	95	80	*65	65	55	43	36	26
124	Elgin..... "	135	119	95	80	65	65	55	44	36	26
125	‡*Hot Lake..... "										
126	†*Nodine..... "	135	115	95	80	65	60	53	43	33	26
127	Union..... "										
128	*Telocasset..... "	135	119	95	80	65	60	55	44	35	26
129	North Powder..... "	135	120	95	80	65	60	55	44	35	26
130	†*Hutchinson..... "	135	120	95	80	65	60	55	45	36	26
131	Haines..... "	135	120	95	80	65	60	55	45	36	26
132	Baker City..... "	135	120	95	80	65	60	55	46	36	26
133	*Norton..... "	137	125	95	80	65	63	55	46	36	26
134	†*Encina..... "	138	127	95	81	66	64	55	46	36	26
135	Pleasant Valley..... "										
136	*Unity..... "										
137	Durkee..... "										
138	†*Nelson's..... "	140	130	95	82	67	65	55	46	36	26
139	*Weatherby..... "										
140	*Lime..... "										

Effective January 1, 1907. (Reissue). O. R. N. L. C. C. No. 1148.

* No Agent. Freight must be prepaid. † Carload freight only will be received or delivered.
‡ L. C. L. freight only will be received or delivered.

Station No.	BETWEEN Portland, †East Portland, Albina, †St. Johns, Ore., AND		CLASS RATES IN CENTS PER 100 POUNDS.								
			1st	2d	3d	4th	5th	A	B	C	D	E
141	*Gibson	Ore.	45	40	35	28	22	24	20	16	13	10
142	*Sinks	"	48	42	37	30	23	27	22	18	15	12
143	Wasco	"	52	44	38	32	24	29	24	20	17	13
144	*Klondyke	"	55	46	40	34	26	31	25	21	18	14
145	*Sandon	"	57	48	41	35	27	32	27	21	18	14
146	†*Hay Canyon	"	60	51	44	37	29	34	28	22	18	14
147	*McDonald	"	60	51	44	37	29	34	28	22	18	14
148	*DeMoss	"	60	51	44	37	29	34	28	22	19	15
149	Moro	"	60	54	46	39	30	35	29	22	19	15
150	*Erskinville	"	62	56	47	40	31	36	30	23	19	15
151	Grass Valley	"	65	57	49	41	32	37	31	24	20	16
152	*Bourbon	"	67	61	52	44	34	39	32	25	21	16
153	*Kent	"	70	63	53	45	35	40	33	25	21	17
154	*Wilcox	"	72	64	54	46	36	41	34	26	22	17
155	Shaniko	"	75	67	57	49	38	43	35	28	23	18
156	*Eddy	"	69	58	49	41	32	36	30	23	19	16
157	*Shutler's	"	71	59	50	43	33	38	31	24	20	16
158	*Rock Creek	"	73	61	52	44	34	39	32	25	21	17
159	*Barnett	"	75	63	53	45	35	40	33	26	22	17
160	*Mikkalo	"	77	64	54	46	36	41	34	26	22	17
161	*Clem	"	79	66	56	47	37	42	35	26	22	18
162	*Speece	"	81	68	57	49	38	43	35	27	23	18
163	*Gwendolen	"	83	69	59	50	39	44	36	28	23	18
164	Condon	"	85	71	60	51	40	45	37	29	24	19

Effective Jan. 1, 1907 (Reissue) O. R. N., L. C. C. No. 1146.

DIVERSIONS.

The Carriers, parties to this Tariff, permit change in destination of freight, whether in transit or after arrival at original or subsequent destination (if no part of shipment has been removed from car or possession of carrier), at the through published rate, plus demurrage and terminal charges, if any, at original or subsequent destination; provided, final destination is in the same general direction as the point to which the freight was originally consigned.

WESTERN CLASSIFICATION RULE.

The Rates as named in this tariff or as amended are subject to the ratings, rules and regulations of the Western Classification in effect at date of shipment, except as provided herein.

TERMINAL CHARGES.

The rates as named in tariff and as amended are subject to terminal charges and privileges and facilities provided by the delivering line in its regularly published tariff covering such service.

The carload rates of the legally published tariffs of Union Pacific R. R. will apply from all industries or other points on its tracks where carload freight is received at point of origin to all industries or other points on its tracks where carload freight is delivered at destination.

*No Agent. Freight must be prepaid.
†Carload freight only will be received or delivered.

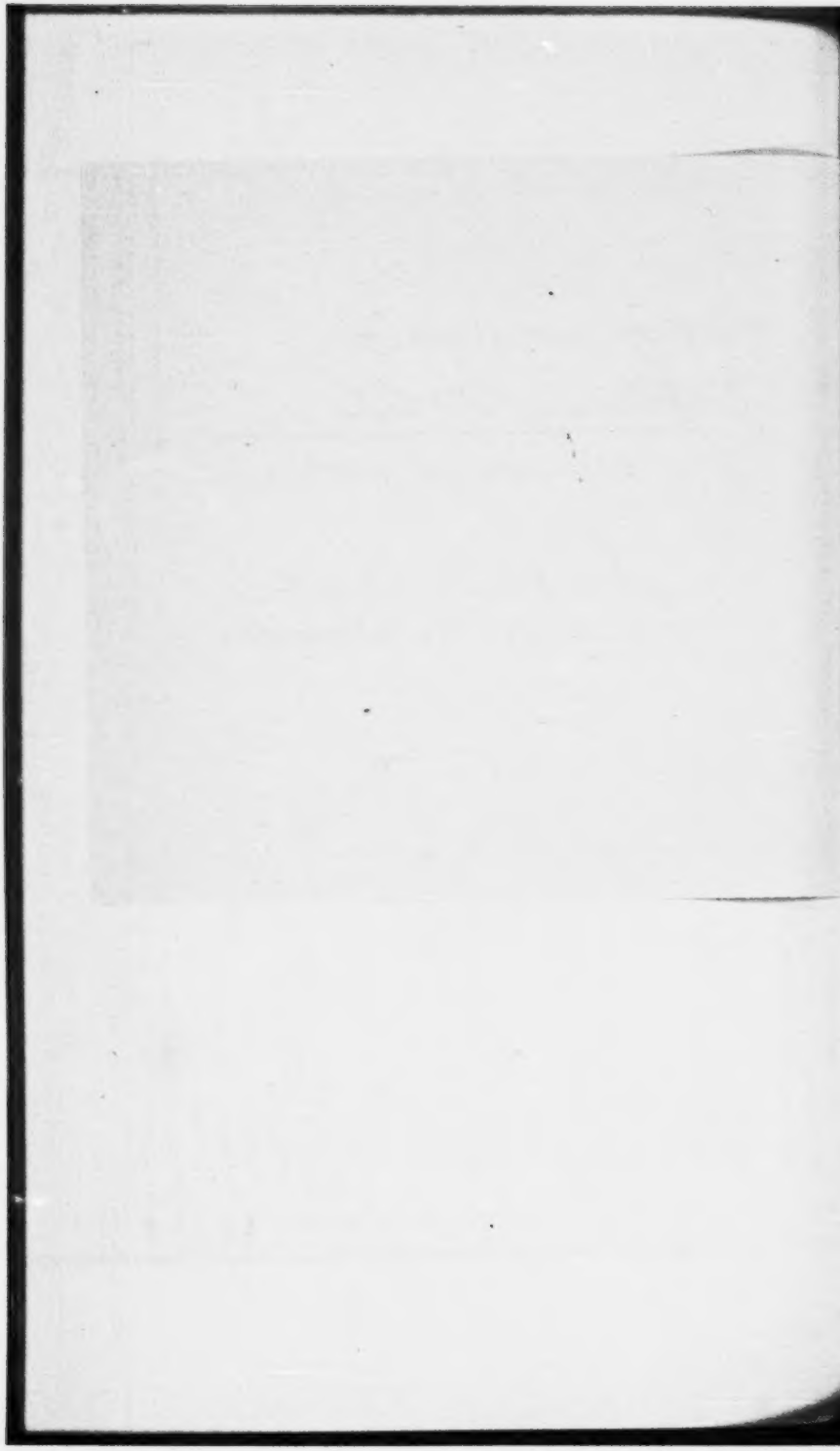


EXHIBIT "I".

Before the Railroad Commission of Oregon.

No. 102. F-21.

PORTLAND CHAMBER OF COMMERCE, Plaintiff,
vs.
THE OREGON RAILROAD & NAVIGATION COMPANY, Defendant.

Order.

The above named plaintiff, Portland Chamber of Commerce, is a corporation organized for the purpose, among other things, of promoting the commercial and industrial welfare of the City of Portland and State of Oregon, and the proceeding was brought by the plaintiff in behalf of the manufacturers, merchants, dealers and shippers in said city and of its residents and the residents of the state generally.

The complaint alleges, among other things, that the charges exacted by the defendant company for transporting all kinds of merchandise and commodities under the class rates now in effect over and on said defendant company's main and branch lines from Portland, Oregon, to points as set forth in the defendant's freight tariff effective January 1, 1907, No. L 525 O. R. C. No. 39, I. C. C. No. 1146, with supplements amendatory thereof, are excessive, unjust and unreasonable.

The petitioner prays that the said defendant railroad company be required to answer the charges in the complaint; that, after due hearing and investigation, an order be made commanding the defendant company to cease and desist from making said unjust and unreasonable charges, and that an order be made fixing, establishing and substituting in lieu of said rates and charges reasonable rates of compensation for the transportation of merchandise and commodities from the City of Portland to points on the lines of defendant's railroad in the State of Oregon, and that the defendant railroad company be ordered and required to conform to the same, and for such other further order as the Commission may deem necessary and just in the premises.

In answer to the above complaint the defendant denies the allegations above set out.

The cause came on for hearing and investigation on the 4th day of November, 1907. At this hearing, and at all subsequent hearings the complainant was represented by Joseph N. Teal, its attorney, and the defendant was represented by W. W. Cotton, its attorney. A large amount of testimony was taken, and all of the issues presented and investigated very carefully.

After due investigation and consideration of all the facts presented, we have reached the conclusion and have determined that the class rates in issue in this proceeding now charged by the defendant com-

pany for the transportation of various commodities within this state are unjust and unreasonable, and should be reduced, and find as follows:

First. That the defendant, The Oregon Railroad and Navigation Company is a corporation duly organized and doing business under the laws of the State of Oregon, and is a public service corporation and a common carrier engaged in the transportation of passengers and property between points within the State of Oregon, and as such common carrier is subject to the provisions of the Act to Regulate Transportation and Commerce, etc., filed in the office of the Secretary of State of the State of Oregon February 18, 1907; that a main line of the railway of the said defendant runs from the City of Portland, Multnomah County, Oregon, to the town of Huntington in Baker County, in said state, and lies wholly within the State of Oregon.

Second. That the class rates now in effect under defendant's freight tariff effective January 1, No. L 525, O. R. C. No. 39, I. C. C. No. 1146, with supplements amendatory thereof, over and on said defendant company's main, branch, leased and otherwise controlled railroad lines within the state of Oregon, between the City of Portland and all points within said state on said lines of railroad east of the City of The Dalles in said state, are unjust and unreasonably high. Said tariff is based on existing Western Classification. That the defendant has established class rates between Portland and branch line points which generally are the same or lower for equal distance on the main line.

Third. That between the City of Portland, Oregon and all points east of The Dalles, except where, under said tariff, the rates are now the same or less than are prescribed herein, the first-class rates now in effect under said tariff should be reduced by an amount equal to one-sixth of the difference between twenty-five cents, (the existing first class rate to The Dalles) and the existing first class rate to such point; and that all other class rates between Portland and points east of The Dalles, with the exception above noted, should be reduced and bear the same relation to the first class rate as is provided in the distance tariff of said defendant company, to-wit:

	Classes.									
	1	2	3	4	5	A	B	C	D	E
Per cent of first class....	100	85	70	60	50	50	40	30	25	20

The rates on branch lines to be the same as on the main line for equal mileage. And that such rates are hereby determined to be just and reasonable rates for the transportation of the property and commodities covered by said tariff under said classes; and that present rates between Portland and any point in the State of Oregon under said tariff should not be exceeded on any class.

It is therefore ordered, considered and determined that the defendant company, The Oregon Railroad and Navigation Company, shall cease and desist from charging any higher rates within this state for the transportation of merchandise and other commodities

between the City of Portland and points on the defendant company's main, branch, leased or otherwise controlled railroad lines within the State of Oregon, covered by the class rates in said tariff No. L 525, O. R. C. No. 39, I. C. C. No. 1146, than the class rates prescribed in this order, and that said railroad company, in lieu of the rates herein ordered discontinued, shall substitute the following maximum rates:

Reduce first class rates (under present Western Classification) between Portland and all points east of The Dalles (except where, under the existing tariff, the rates are now less than prescribed herein) by an amount equal to one-sixth of the difference between twenty-five cents (the existing first class rate to The Dalles) and the existing first class rate to such point, and reduce all other class rates between Portland and points east of The Dalles, with the exception above noted, so that they will bear the same relation to the first class rate as is provided in the distance tariff of said defendant railroad company, to-wit:

	1	2	3	4	5	A	B	C	D	E
Per cent of first class....	100	85	70	60	50	50	40	30	25	20

The defendant shall apply such rates to the supplements to and reissues of the present Western Classification.

It is further ordered, considered and determined that the rates under the existing tariff shall not be exceeded on any class between any points covered by said tariff nor apply to or change any rate now in effect that is lower than the rates prescribed by this order; provided, the rates herein ordered may equal the present rates between Portland and The Dalles when the application of the formula herein prescribed would reduce the rates below the said present rates between Portland and The Dalles.

When the application of the formula produces a remainder of one half cent or greater fraction the company shall be entitled to charge the whole cent, and when less than one half cent the same shall be dropped.

The rates prescribed by the foregoing order shall be effective from and after twenty days after the service of a copy hereof on the defendants as required by law, and the defendant is given until twenty days after such service to prepare and file new tariffs in accordance with the provisions of this order.

Dated this 22d day of April, 1908, at Salem, Oregon.

RAILROAD COMMISSION OF OREGON,
By THOS. H. CAMPBELL,
CLYDE B. ATCHISON, *Commissioners.*

Attest:
GEO. O. GOODALL, *Secretary.*

Certification.

I, George O. Goodall, Secretary of the Railroad Commission of Oregon, hereby certify that I have prepared the foregoing copy of Order in the matter of Portland Chamber of Commerce vs. The Oregon Railroad & Navigation Co., and have carefully compared the same with the original thereof, and that the foregoing is a true and correct transcript of the said original in the above entitled matter, and of the whole thereof.

Witness my hand and the Seal of the said Commission hereto affixed at the office of said Commission in Salem, Oregon, this 22d day of April, 1908.

(Sgd.) GEO. O. GOODALL,
[OFFICIAL SEAL.] *Secretary of Railroad Commission of Oregon.*

[Endorsed:] Before the Railroad Commission of Oregon. No. —. In the —. Portland Chamber of Commerce, Complainant, vs. The Oregon Railroad & Navigation Co. Defendant. Exhibit I. U. S. Circuit Court. Filed May 11, 1908. J. A. Sladen, Clerk, District of Oregon.

Signed for Identification:

JAMES G. WILSON,
Of Solicitors for Complainant.
JOSEPH N. TEAL,
Of Solicitors for Defendants.

I. C. C. No. 1146.
Supersedes I. C. C. No. 958

Ex A.

No. L-525
Supersedes No. L-425, 30-CS and 8-OC

THE OREGON RAILROAD & NAVIGATION CO.

FREIGHT TARIFF

—BETWEEN—

PORTLAND, EAST PORTLAND, ALBINA, ST. JOHNS, OREGON,

—AND—

Points in Oregon, Washington and Idaho.

Exhibit "K"

U S Circuit Court
Filed
May 11, 1908
Clerk
District of Oregon

EFFECTIVE JANUARY 1, 1907

This Tariff is Subject to Western Classification and Current Rules and Regulations of this Company Governing Transportation of Freight. Where Tariff and Classification Conflict, the Tariff will Govern.

Rates named herein must not be exceeded on similar shipments in same direction between intermediate points on direct line, except as otherwise provided.

R. B. MILLER,
General Freight Agent.

W. E. COMAN,
1st Ass't General Freight Agent.

W. D. SKINNER,
Assistant General Freight Agent.

Portland, Ore., November 24, 1906.
Mailed I. C. Com., November 24, 1906.

J. P. Co.—4,000

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Latourelle, Ore.	8
Lee, Wash.	230
Lewiston, Idaho	213
Lexington, Ore.	68
Lime, Ore.	122
Log Cabin, Wash.	191
Long Hollow, Wash.	188
Longs, Wash.	165
Lovell, Idaho	260
Lowden's, Wash.	152
M	
Mace, Idaho	290
Malcolm's, Wash.	179
Mammoth Ore Bin, Idaho	281
Mayview, Wash.	198
McAdams, Wash.	222
McDonald, Ore.	36
Meacham, Ore.	90
Medimont, Idaho	267
Meeker, Wash.	217
Menoken, Wash.	169
Menominee, Ore.	18
Mica, Wash.	299
Mikkalo, Ore.	56
Miller's, Wash.	185
Miller's, Ore.	13
Milton, Ore.	134
Mission, Ore.	82
Mockonema, Wash.	232
Montavilla, Ore.	1
Moore, Wash.	146
Morgan, Ore.	65
Moro, Ore.	38
Moscow, Idaho	243
Mosier, Ore.	21
Mullan, Idaho	285
Murdock, Ore.	92
N	
Nelson's, Ore.	120
New York Bar, Wash.	181
Nibley, Ore.	91
Nodine, Ore.	108
Nolin, Ore.	78
North Fork, Ore.	86
North Powder, Ore.	111
Norton, Ore.	118
O	
Oakesdale, Wash.	254
Offield's, Wash.	195
Oneonta, Ore.	10
Osborne, Idaho	281
P	
Page, Wash.	142
Pampa, Wash.	219
Parrington's, Wash.	184
Pendleton, Ore.	81
Penewawa, Wash.	186
Perry, Ore.	98
Pierce's, Ore.	101
Pine Creek, Idaho	275
Pleasant Valley, Ore.	117
Plummer, Idaho	262
Pomeroy, Wash.	177
Porter, Ore.	89
Prescott, Wash.	161
Pullman, Wash.	239
Q	
Quarry, Ore.	2
Quinton, Ore.	49
R	
Rahms, Wash.	284
Relief, Wash.	171
Rhea, Ore.	63
Rhinehart, Ore.	105
Rice's, Wash.	187
Riparia, Wash.	178
Riverside, Wash.	235
Rock Creek, Ore.	54
Rockford, Wash.	296
Rooster Rock, Ore.	7
Rose Lake, Idaho	269
Rowena, Ore.	22
Rufus, Ore.	46
Russell's, Wash.	156
Ruthton, Ore.	19
S	
St. John, Wash.	250
Sampling Works, Idaho	283
Sandon, Ore.	34
Sand, Ore.	137
Saxe, Ore.	122
Scott, Wash.	146
Seltice, Wash.	257
Seuferts, Ore.	24
Shaniko, Ore.	44
Shawnee, Wash.	236
Shutler's, Ore.	53
Sierra Nevada Jct., Idaho	278
Simmon's, Wash.	143
Sinks, Ore.	31
Smith's, Wash.	202
Snake River, Wash.	141
Speece, Ore.	58
Spofford, Ore.	135
Spokane, Wash.	302
Spring, Ore.	94
Springston, Idaho	266
Squall John's, Wash.	208
Squally Hook, Ore.	48
Starbuck, Wash.	172
State Line Ore. and Wash.	137
Steptoe, Wash.	209
Sulphur, Wash.	225
Summit, Ore.	25
Sunset, Wash.	251
Sweeney, Idaho	277
T	
Taylor's, Wash.	206
Tekoa, Wash.	258
Telocasset, Ore.	110
Texas City, Wash.	214
The Dalles, Ore.	23
Thorn Hollow, Ore.	84
Thornton, Wash.	252
Tilma, Wash.	259
Touchet, Wash.	151
Troutdale, Ore.	5
Trunx, Wash.	201
Tumwater, Ore.	26
Turner, Wash.	163
U	
Umatilla, Ore.	74
Union, Ore.	109
Unity, Ore.	118
V	
Valley Grove, Wash.	157
Viento, Ore.	17
W	
Wade's, Wash.	191
Waitsburg, Wash.	163
Walker, Wash.	144
Wallace, Idaho	284
Walla Walla, Wash.	155
Wallula, Wash.	139
Walter's, Wash.	247
Wardner, Idaho	280
Warner, Wash.	256
Warrendale, Ore.	12
Wasco, Ore.	32
Washtucna, Wash.	221
Watts, Idaho	261
Waverly, Wash.	294
Wawawai, Wash.	197
Weatherby, Ore.	121
Weston, Ore.	130
Whetstone, Wash.	167
Wilcox, Ore.	43
Whitlow, Wash.	240
Whitman, Wash.	153
Willada, Wash.	249
Willows, Ore.	61
Winona, Wash.	228
Wyeth, Ore.	16
Y	
Yoakum, Ore.	79
Z	
Zumwalt, Wash.	176

SUPPLEMENT No. 36 to W. R. C. No. 31 | SUPPLEMENT No. 38 to O. R. C. No. 39 | SUPPLEMENT No. 38 to I. C. C. No. 1146

THE OREGON RAILROAD & NAVIGATION CO.

SUPPLEMENT No. 38

Supplements Nos. 22, 35, 37 and 38 are in effect and contain all changes.

—TO—

FREIGHT TARIFF No. L-525

Refer to the above numbered Tariff naming Class and Commodity Rates between Portland, East Portland, Albina, St. Johns, Ore. and points in Oregon, Washington and Idaho and make following additions:

ITEM Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
95	**Mineral Water**.....C. L.	Portland.....Ore. East Portland.. " Albina..... " St. Johns..... " Maegly Jct..... "	*Turner.....Wash. Pomeroy... " Lewiston.....Ida. Connell.....Wash. Moscow.....Ida. Waverly....Wash. Spokane.... " Burke.....Ida. Mullan..... "	57	Minimum weight 24,000 lbs. File J-1020
35-B Cancels 35-A	**Paper, News**..C.L.	Do.	Lewiston.....Ida. Moscow..... " Spokane....Wash.	†38½	Minimum weight 30,000 lbs. †Effective June 10, 1908 File 4122

*No Agent. Freight charges must be prepaid.

ISSUED APRIL 30, 1908

EFFECTIVE JUNE 8, 1908
EXCEPT AS NOTED IN INDIVIDUAL ITEM.

By

R. B. MILLER,
General Freight Agent,
Portland, Ore.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

K. & S.—3000

THE OREGON RAILROAD & NAVIGATION CO.

SUPPLEMENT No. 37

Cancels Supplement No. 36
Supplements Nos. 22, 35 and 37 are in effect and contain all changes.

—TO—

FREIGHT TARIFF No. L-525

Refer to the above numbered Tariff naming Class and Commodity Rates between Portland, East Portland, Albina, St. Johns, Ore., and points in Oregon, Washington and Idaho and make following additions:

Item Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
93	Canned Goods, C. L.	Milton ..... Ore. Walla Walla, Wash.	Portland ..... Ore. East Portland.. " Albina..... " *St. Johns..... " *Maegly Jct.... "	35	Minimum weight 30,000 lbs File 11145
	Cattle, C. L., for grazing in transit.....	Huntington ..... Ore. Elgin..... "	Do	See Remarks	May be stopped at Echo, Ore., for grazing at a charge of $5.00 per car in addition to through rate from point of origin to destination.

94 Cancels 59 as amended

Above subject to following Rules and Regulations:

1. **Way-billing.**—Agents at originating points will way-bill to feeding point at local rate, showing final destination on way-bill, together with notation that cattle are for grazing in transit. Agent at Echo will rebill to destination at difference between local rate to feeding point and through rate to destination, plus the $5.00 per car for stopping in transit.

2. **Time Allowed.**—Above grazing in transit privilege will only apply on shipments that are forwarded to destination within *six months* after arrival at feeding point and on condition that no change in stock shall be made at feeding point, and ownership remains the same.

3. **Live Stock Contract and Release**—Live Stock contracts will read from point of origin to final destination and bear notation that shipments are to be stopped at Echo, Ore., to permit grazing of cattle in transit. Agent at Echo, shall, when cattle are turned out for feed, require the surrender by shipper, of the original Live Stock contract, which he will hold until the stock goes forward and endorse on back of same as follows: "I hereby release The O. R. & N. Co. from any loss or damage from any cause whatever that may occur to stock covered by this contract while outside of the R. R. Co.'s Stock Yards at Echo, or while being taken from or returned to said Stock Yards." This endorsement to be signed in full by the owner as shown in the Live Stock contract, or by his authorized representative in charge of the stock, and in latter case the representative should sign the full name of owner, and his own full name as agent.

*No Agent. Freight charges must be prepaid.

ISSUED APRIL 27, 1908 **EFFECTIVE JUNE 6, 1908**

By
R. B. MILLER,
General Freight Agent,
Portland, Ore.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

J. P. Co.—3000

THE OREGON RAILROAD & NAVIGATION CO.

SUPPLEMENT No. 35

Supersedes Nos. 8, 27, 33 and 34
(Supplements Nos. 22 and 35 in effect.)

—TO—

FREIGHT TARIFF No. L-525

Refer to the above numbered Tariff naming Class and Commodity Rates between Portland, East Portland, Albina, St. Johns, Ore., and points in Oregon, Washington and Idaho and make additions, corrections and cancellations shown herein:

ISSUED APRIL 15, 1908

EFFECTIVE MAY 25, 1908
Except as shown in reissued and later items

By
R. B. MILLER,
General Freight Agent,
Portland, Ore.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

J. P. Co.—3200.

Refer to Special Commodity Rates, Pages 21 to 26 inclusive, and make following additions and corrections:

Date Effective	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
May 25 1908	46-A Cancels 46	4065	**Apples,** in sacks or boxes	The Dalles, Ore.	Portland .... Ore. †East Portland " Albina ..... " †*St. Johns .. " †*Maegly Jct "	10	Any quantity
Do.	47-A Cancels 47		**Barrel Stock**	Portland ....Ore. East Portland " Albina ..... " St. Johns ..... " Maegly Jct.... "	*Lime ..... Ore.	15	C. L., minimum weight 24,000 lbs.
Do.	48-A Cancels 48	6495	**Beer** in wood or glass	Portland ....Ore. †East Portland" Albina....." †St. Johns....." †Maegly Jct. "	La Grande..Ore.	65	L. C. L., subject to estimated weights provided in current Western Classification
Do.	49-A Cancels 49	6495			Baker City..Ore.	35	C. L., minimum weight 24,000 lbs.
Intrastate Feb. 18 1907 Interstate Mar. 25 1907 In Sup. 2 to I. C. C. No. 1146	51		**Fruit, Green**	The Dalles..Ore.	Portland ....Ore.	18	L. C. L.
Do.	53	7346	**Pine Needle Fibre**	Imbler .....Ore.	East Portland, Ore.	19¼	C. L., minimum weight 18,000 lbs.
Do.	54	9299	**Plaster**	Lime .....Ore.	Portland ....Ore. East Portland " Albina ..... " *St. Johns..... "	12½	C. L., minimum weight 40,000 lbs.
July 15 1907 In Sup. 5. to I. C. C. No. 1146	55½	6594	**Cider and Vinegar**	Walla Walla, Wash.	Do.	40	C. L., minimum weight 30,000 lbs.
May 1 1907 In Sup. 3 to I. C. C. No. 1146	56 Cancels 14		**Fruit, Tropical and Citrus,** including Oranges, Lemons, Bananas, Pineapples, Figs, Dates, and Cocoanuts, but not including Cranberries, O. R. weather and decay, P. P. or guaranteed ..... Oranges, when in standard size boxes (*i. e.*, outside measurement 12x12x26 inches; cubic space where Oranges are packed, 11⅝x11⅝x24 inches), will be estimated at 72 lbs. per box. Lemons, when in standard size boxes (*i. e.*, outside measurement 11x14½x24 inches), will be estimated at 84 lbs. per box. If boxes of irregular sizes are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.	Portland ....Ore. East Portland " Albina ..... " St. Johns..... "	Spokane, Wash. And all points north of Pendleton, Ore., and Wallula, Wash., both inclusive.	56	C. L., minimum weight see Rule 44, Page 31 of Tariff, as amended.

*No agent. Freight charges must be prepaid.
†Carload freight only will be received and delivered.

Date Effective	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
May 25 1908	56½-I Cancels 50 as amended by 56½	RD-879	**Box Shooks**	Elgin..... Ore.	Portland ...Ore. East Portland " Albina ..... " *St. Johns ..... " *Maegly Jct.. "	20	C. L., minimum weight 30,000 lbs.
Mar. 16 1908 In Sup. 23 to I. C. C. No. 1146	35-A Cancels 35	4132	**Paper, News**..... ...	Portland ....Ore. East Portland " Albina ..... " St. Johns..... "	Spokane..Wash. Moscow .....Ida. Lewiston..... " Walla Walla Wn Wallula ..... " And points directly between.	35	C. L., minimum weight 30,000 lbs.
Apr. 10 1908 In Sup. 27 to I. C. C. No. 1146	83 Cancels 67	7705	**Iron and Steel Articles**, viz.: Bar, Band, Hoop, Rod, Slab or Tank Iron, O. R. wet or rust.. ..	Do.	*Duncan ....Ore. Huntington " And points between.	55	C. L., minimum weight 30,000 lbs.
Intrastate Apr. 1 1908 Interstate Apr. 27 1908 In Sup. 28 to I. C. C. No. 1146	84	7686	**Coke**.....	Do.	Huntington Ore	15	C. L., minimum weight 30,000 lbs.
May 1 1908 In Sup. 29 to I. C. C. No. 1146	86	9475	**Bags**, Burlap, Gunny or Jute.....	Do.	Spokane..Wash. Waverly..... " Burke..... ..Ida. Mullan. ..... " Moscow ..... " Connell ..Wash. Lewiston ....Ida. Riparia ..Wash.	50	C. L., minimum weight 40,000 lbs.
					*Grange City Wash. Pomeroy..... " *Turner..... " *Thorn Hollow Ore. Heppner..... "	40	
					Elgin .....Ore. Huntington .. "	50	
Intrastate Apr. 10 1908 Interstate May 4 1908 In Sup. 30 to I. C. C. No. 1146	87 Cancels 79	11177	**Beet Sugar Refuse**, in barrels.....	La Grande..Ore.	Portland ....Ore. East Portland " Albina ..... " St. Johns..... "	20	C. L., minimum weight 40,000 lbs.

*No agent. Freight charges must be prepaid.

Refer to Special Commodity Rates, Pages 21 to 26 inclusive, and make following additions and corrections:

Date Effective	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
May 8 1908 In Sup. 31 to I. C. C. No. 1146	88	J-1064	**Lumber**.....	Hood River, Ore.	Portland ....Ore. East Portland "	5	C. L., minimum weight see Rule 17, Page 29 of Tariff. Applies only on shipments destined to points south of Portland, Ore., via Southern Pacific Co.
Intrastate Apr. 18 1908 Interstate June 12 1908 In Sup. 33 to I. C. C. No. 1146	90 Cancels 89	RD-1972	**Lime and Plaster,** mixed carloads	Jennings ....Ore. Lime..... "	Portland ....Ore. East Portland " Albina ..... " *St. Johns..... " *Maegly Jct " *Bruun..... " *Doernbechers" *Montavilla.. "	†12½	C. L., minimum weight 40,000 lbs. †Applies from and to points named only.
Intrastate Apr. 18 1908 Interstate May 15 1908 In Sup. 33 to I. C. C. No. 1146	91 Cancels 52 as amended by 85	7068	**Lime or Lime Rock,** in barrels, bulk or sacks, estimated weight when in barrels, 200 lbs. per barrel.....	Jennings ....Ore. Lime..... " Nelson's..... " Pleasant Valley Ore.	Portland ....Ore. East Portland " Albina ..... " *St. Johns..... " *Maegly Jct.. " *Bruun ..... " *Doernbechers" *Montavilla..	†12½	C. L., minimum weight, see Rule 43, Page 31 of Tariff as amended. †Applies from and to points named only.
May 25 1908	10-D Cancels 10-C		**Cereals,** viz.: Rye, Wheat, Buckwheat, Graham, Whole Wheat and Pancake Flour; Corn Flakes, Corn Meal, Hominy, Grits, Oatmeal, Rolled Oats, Rolled Rye, Farina, Cerealine, Maizea, Germea, Cracked Wheat, Vitos, Shredded Biscuit, Pearl Barley, Farinose, Malta Vita, Grape Nuts, Refined Grits, and Cereal Breakfast Foods, N. O. S.; in packages, mixed carloads or L. C. L..... NOTE.—Postum Cereal will not be accepted at these rates; will take rate applying on Coffee and Coffee Substitutes.	BETWEEN Portland Ore. †East Portland" Albina ..... " †St. Johns..... " †Maegly Jct. "	AND Shaniko.... Ore. Condon..... " Heppner..... " Elgin ..... " Baker City.. " *Turner..Wash. Pomeroy..... "	25	Straight or mixed carloads, minimum weight 30,000 lbs.
					Lewiston.... Ida. Connell ..Wash. Moscow ..... Ida. Waverly, Wash. Spokane..... " Burke..... Ida. Mullan..... "	55	L. C. L.
				Do.	AND Huntington Ore	30	Straight or mixed carloads, minimum weight 30,000 lbs.
						82	L. C. L.

*No agent. Freight charges must be prepaid.
†Carload freight only will be received and delivered.

Date Effective	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
May 25 1908	15-A Cancels 15		Fruits, Green, including Small Berries and Vegetables, except Class "C" Vegetables, as per Western Classification (but not including Tropical and Citrus Fruits or Cranberries, etc., as specified in Item 56), O. R. weather and decay, P. P. or guaranteed	Portland ....Ore. East Portland " Albina ..... " St. Johns ..... " Maegly Jct.. . "	Turner....Wash. Pomeroy.. " Lewiston.... Ida. Connell .. Wash. Moscow ..... Ida. Waverly, Wash. Spokane " Burke.....Ida. Mullan..... "	56	C. L., minimum weight 20,000 lbs.
Do.	32-A Cancels 32	8928	Oils, O. R. L., viz.: Castor, Cocoanut, Corn, Rubber, Rape Seed, Dead, Kalon, Lard, Linseed, Neatsfoot, Red, Resin or "Y," and Tallow, in cans, boxed, in barrels, or in bulk in tank cars, loaded to capacity	Do.	Do.	65	C. L., minimum weight 24,000 lbs., except as otherwise noted.

Jan. 20 1907
In Sup. 1 to I. C. C. No. 1146

Refer to General Rules and Conditions, Page 31 of Tariff, and **Add** the following:

42. **Minimum Weight—Cars Furnished Company's Convenience.** Where standard cars of 34 feet or longer are ordered by shipper, and equipment of larger size is furnished at carrier's convenience, the minimum carload weight to be applied, **if governed by length of car,** shall be that provided for car of length called for, but not less than for length of car required to contain the load.

May 25 1908

Refer to General Rules and Conditions, Page 31 of Tariff, and **add** the following:

43. **Minimum Weight,** under Commodity Rates, when not otherwise specified, will be marked capacity of car, except when the cars are loaded to full visible or carrying capacity and contain less than the marked capacity, actual weight will govern, and except when cars of greater capacity than ordered are furnished at Company's convenience, actual weight subject to minimum provided for car of the capacity ordered will govern, but in no case less than 30,000 lbs.

Intrastate Feb. 18 1907
Interstate Mar. 25 1907
In Sup. 2 to I. C. C. No. 1146

Refer to Rule No. 1, Page 27 of Tariff, providing for minimum weights to govern on shipments of Hay or Straw, and make following addition:

Refrigerator Cars .....16,000 lbs.

File 10581.

Feb. 18 1908
In Sup. 24 to I. C. C. No. 1146

Refer to column rates on Lumber, Shingles, etc., Pages 11 to 18 inclusive of Tariff, and **Add** Maegly Junction, Ore., at rates provided from and to St. Johns, Ore.

File 10698.

Date Effective	
Apr. 10 1908 In Sup. 27 to I. C. C. No. 1146	Refer to Page 11 of Sup. No. 22 to Tariff, or as amended, and under "Distance Rates" **Add** the following: "Will not apply to or from Portland, East Portland, Albina or St. Johns, Oregon." File J-1175.
Intrastate Apr. 18 1908 Interstate May 15 1908 In Sup. 33 to I. C. C. No. 1146	Refer to Tariff and Supplements thereto, and **Add** Maegly Junction, Ore., at same rates as apply to or from Portland, Ore. File 1c698.

May 25 1908

Refer to Page 13 of Tariff and **Add** Sparks and Pilot Rock, Ore., Index Nos. 80-B and 80-C, at rates shown below:

Index Nos.	Miles from Portland.	BETWEEN PORTLAND, EAST PORTLAND, ALBINA, ST. JOHNS, MAEGLY JCT., ORE. AND	CARLOADS. Rates in cents per 100 lbs.					Rates in cents per ton, 2,000 lbs.	LIVE STOCK. In dollars per 30-foot car. See Rules 4 to 16, Page 28.	
			Grain, Flax Seed, Flour and Mill Feed, Straight or mixed carloads, For Minimum Weight, And Articles taking same rates See Rule 2, page 27.	Potatoes or Onions. Straight or mixed carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Poles, Piling, Timbers, and the following articles manufactured therefrom: Bark, Hemlock; Blocks, Base, Corner and Head; Box Shooks, Columns, Cross Arms, Eave Troughs, Fence Posts, Guttering, Ladder Material, Lath, Match Splints, Mouldings (Carpenters'), Pickets, Picture Backing, Pipe Material, Staves and Heading, Tank Material, Telegraph and Telephone Brackets, Ties; Tubing, Pump. Straight or mixed carloads. Minimum Weights, See Rule 17, page 28.	Salt. Minimum weight 40,000 lbs.	Hay or Straw Minimum weight See Rule 1, page 27.	Coal. Minimum weight 30,000 lbs.	Horses and Mules.	Cattle, Hogs, Sheep and Goats.
80-B	232	*Sparks..... Ore.	19¾	18	18	42½	18¾	360	58.00	56.00
80-C	240	Pilot Rock "	20¾	19	19	42½	19¾	360	58.00	56.00

*No agent. Freight charges must be prepaid.

Do.

Refer to Page 5 of Tariff and **Add**: Sparks and Pilot Rock, Ore., Index Nos. 80-B and 80-C, at rates shown below.

Index Nos.	Miles from Portland	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, †MAEGLY JCT., ORE. AND	CLASS RATES In cents per 100 lbs.									
			1	2	3	4	5	A	B	C	D	E
80-B	232	*Sparks..... Ore.	114	97	80	68	56	56	46	34	29	23
80-C	240	Pilot Rock..... "	116	99	81	70	58	58	46	35	29	23

*No agent. Freight charges must be prepaid.
†Carload freight only will be received and delivered.

Date Effective	
Intrastate Feb. 18 1907 Interstate Mar. 25 1907 In Sup. 2 to I. C. C. No. 1146	Refer to Page 7 of Tariff and **Correct** Class "A" rates shown at Ennis, Prescott and Bolles, Wash., to read 54 cents.
Do.	Refer to Page 7 of Tariff and **Correct** Class "C" rate shown at Walla Walla, Wash., to read 35 cents.
May 1 1907 In Sup. 3 to I. C. C. No. 1146	Refer to Index No. 105, Page 13 of Tariff, and **Correct** rate on Hay and Straw, at Rhinehart, Ore., to read 19¼ cents per 100 pounds.
May 1 1907 In Sup. 3 to I. C. C. No. 1146	Refer to Exceptions to Classification, Page 19 of Tariff, and **Correct** Paragraph 2 to read as follows: Agricultural Implements, not including Hand Implements (as enumerated in Western Classification), and parts thereof, including Agricultural Implement Castings, loose, or in bundles or boxes; Feed Mills, Farm Wagons, Bob Sleds, Wind Mills, K. D., and parts thereof; Traction and Portable Farm Engines, including Gasoline Engines, Horse Powers and Separators, less carloads..3rd Class Note 1.—Shipments of Portable and Traction Engines, Horse Powers and Separators must be loaded and unloaded by Shippers. All shipments at above rates are subject to provisions of Western Classification, including Rules and Conditions, and must be packed in such shape as required to obtain lowest rate provided therein unless otherwise specified above. Note 2.—Rates named above will not apply on Barrel Water Carts, Wooden Tanks, square or round; Hose and Belting, rubber, cotton, canvas or leather; Pumps; Lamps; Headlights or printed matter, except as specifically provided by foot note on Page 9 of Western Classification No. 41, or reissues thereof. Minimum charge for shipments loaded on open cars will be based 5,000 lbs. at rates named. File 8625.
July 1 1907 In Sup. 4 to I. C. C. No. 1146	Refer to Rule 44, Page 31 of Tariff, and **Correct** same to read as follows: 44. Carload weight on Citrus and Tropical Fruits will be as follows: In cars 37 feet or less in length, outside measurement. Lemons .....24,190 lbs. Oranges and Grape Fruit.....24,190 lbs. Mixed carloads of Citrus and Tropical Fruits...24,190 lbs. In cars over 37 feet in length, outside measurement: Lemons .....26,200 lbs. Oranges and Grape Fruit.....26,700 lbs. Mixed carloads of Citrus and Tropical Fruits...26,700 lbs. Cars must be loaded with not less than two tiers of boxes high and six tiers wide. File 10607.
Sept. 3 1907 In Sup. 8 to I. C. C. No. 1146	Refer to Index Nos. 173 to 177 inclusive, Page 15 of Tariff, and **Correct** rates on Potatoes and Onions between Portland, Ore., and points on Pomeroy Branch to read 17 cents per 100 lbs.

Date Effective	
May 25, 1908	Refer to Page 19 of Tariff and **Add** the following Exceptions to Classification Harvesting Outfits, consisting of Threshing Machines, Headers, Wagons, Wagon Tanks, Traction Engines, Camp Outfits, Horses and Mules, not exceeding 10 head, and feed for same, carloads, minimum weight 20,000 lbs.....Class A Junk, as per Western Classification, including empty glass bottle (old) in mixed carloads, minimum weight 30,000 lbs.....Class C
	Refer to Page 10 of Sup. 22 to Tariff, and **Add** the following Exceptions to Classification governing Distance Rates: Bags, Burlap, Jute or Gunny, straight or mixed C. L., minimum weight 40,000 lbs .....5th Class Bags, Burlap, Jute or Gunny, L. C. L.....4th Class Crockery or Earthenware, in packages with carload or less carload shipments of Cereal Products, will be charged for at the less carload rate on basis of actual weight of the Crockery or Earthenware. Regular tariff rate will be charged on the Cereal Products. On carload shipments the established minimum weight at the carload rate must be observed on the Cereal Products. Harvesting Outfit, consisting of Threshing Machines, Headers, Wagons, Wagon Tanks, Traction Engines, Camp Outfits, Horses and Mules, not exceeding 10 head, and feed for same, carloads, minimum weight 20,000 lbs .....Class A Lime, Cement, Plaster and Stucco, straight or mixed carloads, minimum weight 30,000 lbs.....Class D
Do.	Malt, straight carloads, minimum weight 24,000 lbs.....Same rates as provided for Grain Powder and High Explosives, viz: Atlas, Hercules, Giant, Dittmar, Commercial, Aetna, Hecla, Vulcan, Forcible and other Nitroglycerine Powders and explosive articles: 12,000 lbs. or less.....D. 1st Class Over 12,000 lbs. and under 20,000 lbs. (with C. L. rate and minimum weight as maximum charge) .....1½ 1st Class Carloads, minimum weight 20,000 lbs.....1st Class High Explosive Caps, less carloads.....D. 1st Class High Explosive Caps, carloads, minimum weight 20,000 lbs.....1st Class NOTE 1.—Shipments of Powder, High Explosives, Caps, etc., will only be accepted under Rules and Regulations governing Transportation of such articles as provided in Circular Gen. Frt. Dept. No. 566 Gen'l Supts. No. 32, I. C. C. No. 1141, amendments thereto or subsequent issues thereof. NOTE 2.—Shipments of Powder, High Explosives, Caps, etc., may be transported on Snake River Steamers only in accordance with U. S. Govt. regulations as provided in Circular No. 584, I. C. C. No. 1232, or as amended or reissued. Vehicles, viz: Spring Wagons, Buggies or Carriages, including Buckboards and Road Carts, also parts thereof when shipped separately or with such Vehicles (except buggy tops when shipped separately), less carloads.....1st Class All shipments at above rates are subject to provisions of Current Western Classification, including Rules and Conditions, and must be packed in such shape as required to obtain lowest rate provided therein unless otherwise specified above. File 8625.

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Date Effective	
April 1 1908 In Sup. 26 to I. C. C. No. 1146	Refer to Rule 2, Page 27 of Tariff, minimum weight for Grain, Flour and Mill Feed, and **Correct** Section D to read as follows: SECTION D — COMMODITY: Mill Feed, Bran, Bran Meal, Chopped Corn, Cracked Corn, Cracked Wheat, Crushed Wheat, Hominy Feed, Middlings, Oat Hulls, Shorts, Brewers' Corn Grits, Brewers' Corn Meal, Oil Cake, Oil Cake Meal; in straight or mixed carloads — RATE AS: MILL FEED Minimum wt. 30,000 lbs.
May. 25 1908	Refer to Page 31 of Tariff and **Correct** Rule 45, "Intermediate Application," as amended, to read as follows: 45-B. **Intermediate Application.**—Unless otherwise provided in the Item, the Class or Commodity rates stated in Tariff, or as amended, will apply at directly intermediate points not having a specific commodity rate, unless a lower rate between the same points in the same direction is arrived at by use of the class rates named on Pages 4 to 10 of Tariff or the distance tariff shown on Pages 11, 12 and 13 of Supplement 22, in which event such lower rate so arrived at will apply.
May 1 1908 In Sup. 29 to I. C. C. No. 1146	Refer to Page 19 of Tariff, and under head of Exceptions to Classification, **Correct** items on Bags, Grain, Burlap, etc., to read as follows: Bags, Burlap, Gunny or Jute, C. L., minimum weight 40,000.....5th Class Bags, Burlap, Gunny or Jute, L. C. L.....4th Class File 947.
May 25, 1908.	Refer to Page 8 of Supplement 22 to Tariff, and **Correct** rule covering Diversion and Terminal Charges to read as follows: **Diversions and Terminal Charges.**—Delivery, Demurrage, Diversion or Reconsignment of Freight, Loading and Unloading, Rental Charges of Private Car Lines, Shipper's Count, Storage and other Terminal charges, will be governed by Local Freight Tariff No. L-579, I. C. C. No. 1262, supplements thereto or reissues thereof. File 8058
Do.	Refer to General Rules and Conditions, Page 30 of Tariff, as amended by Supplement 22, and **Correct** Rule 18 to read as follows: 18. **Minimum Charge.**—The minimum charge for any single shipment will be as follows:—Articles taking second class or higher, 100 lbs. at second class rate. Articles taking third class or lower, 100 lbs. at the class rate to which the commodity belongs. Shipments composed of more than one class of freight will be subject to minimum charge provided in this rule for the highest classed article contained in the shipment. In no case will the minimum charge be less than 25 cents. File 9474
Do.	Refer to Page 26 of Tariff, and **Cancel** Item 40, as amended by Item 57-B, naming rate on Stone, etc., between Portland, East Portland, Albina and St. Johns Ore., and all points named in Tariff north or east of Umatilla, Ore. After date of cancellation Local Freight Tariff No. L-596, I. C. C. No. 1309 will govern. File RD-784

Date Effective	
July 1 1907 In Sup. 4 to I. C. C. No. 1146	**Cancel** Rule 20, Page 30 of Tariff, "Small Consignments." File 10710.
July 31 1907 In Sup. 6 to I. C. C. No. 1146	**Cancel** Special Rule No. 3, Page 27 of Tariff, "Export Shipments." After date of cancellation shipments of Grain and Flour for export will be charged full local rates to Portland, East Portland, Albina and St. Johns as provided in above numbered Tariff on Pages 11 to 18 inclusive, or as may be amended. File 7273.
Sept. 3 1907 In Sup. 8 to I. C. C. No. 1146	**Cancel** Item No. 27, Page 24 of Tariff, naming rate on Household Goods or Emigrant Movables from Grants, Ore., to Portland, Ore. After date of cancellation Class Rates, governed by Western Classification, will apply. File 7345.
Do.	**Cancel** Rule No. 29, Page 30 of Tariff, covering River Transfer. After date of cancellation rule will be found in Local Freight Tariff No. L-570 I. C. C. No. 1233, amendments thereto or subsequent issues thereof.
Do.	Refer to Exceptions to Classification, Page 20 of Tariff, and **Cancel** Exception on Wool, Hides, Pelts and Tallow, restoring application of Class Rates. (Special Tariff referred to will be cancelled same date.)
Feb. 18 1907 In Sup. 5 to I. C. C. No. 1146	STATION CHANGES. **Correct** *Lime, Ore., Index No. 122, Pages 6 and 14 of Tariff, to read Lime, Ore.
July 1 1907 In Sup. 8 to I. C. C. No. 1146	**Correct** Bonneville, Ore., Index No. 14, Pages 4 and 11 of Tariff, to read *Bonneville, Ore.
Do.	**Correct** †*Texas City, Wash., Index No. 214, Pages 8 and 16 of Tariff, to read ‡*Texas City, Wash.
Do.	**Correct** *Hermiston, Ore., Index No. 75, Pages 5 and 12 of Tariff, to read Hermiston, Ore.
Do.	**Correct** *Celilo, Ore., Index No. 27, Pages 4 and 11 of Tariff, to read Celilo, Ore.
Sept. 3 1907 In Sup. 8 to I. C. C. No. 1146	**Eliminate** Beet Siding, Wash., Rahms, Wash., and North Fork, Ore., from Station Index, Page 2 of Tariff.
Do.	**Correct** *Diamonds, Wash., Index No. 231, Pages 8 and 16 of Tariff. to read Diamonds, Wash.

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Date Effective	STATION CHANGES—Continued.
Sept. 3 1907 In Sup. 8 to I. C. C. No. 1146	**Eliminate** *North Fork, Ore., Index No. 86, Pages 5 and 13 of Tariff.
Do.	**Add** *Duncan, Ore., Index No. 85-A, Pages 5 and 13 of Tariff, at rates provided for *North Fork.
May 8 1908 In Sup. 10 to I. C. C. No. 1227	**Correct** *Touchet, Wash., Index No. 151, Pages 7 and 14 of Tariff, to read Touchet, Wash.
May 25 1908	Refer to Exceptions to Classification, Page 19 of Tariff, and **Correct** first Item to read as follows: Agricultural Implements (except hand), Windmills and articles classified as Vehicles in Western Classification, except Automobiles and Children's Vehicles, straight or mixed carloads, minimum weight 20,000 lbs..... Class A Note—The rate on Agricultural Implements and Vehicles will apply "only" on articles classified as Class "A" in straight or mixed carloads, under heading of Agricultural Implements and Vehicles in the Western Classification.

THE OREGON RAILROAD & NAVIGATION CO.

SUPPLEMENT No. 22

Supersedes Nos. 14, 18, 19, 20 and 21

(Supplements Nos. 8 and 22 in effect)

—TO—

FREIGHT TARIFF No. L-525

Refer to the above numbered Tariff naming Class and Commodity Rates between Portland, East Portland, Albina, St. Johns, Ore., and points in Oregon, Washington and Idaho, and make additions, corrections and cancellations shown herein:

ISSUED JANUARY 29,1908. EFFECTIVE { INTRASTATE, FEB'Y 10, 1908. / INTERSTATE, MARCH 9, 1908.

EXCEPT AS SHOWN IN REISSUED ITEMS.

By

R. B. MILLER,
General Freight Agent,
Portland, Ore.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

File J-1175

K&S 3200

SPECIAL COMMODITY RATES.

Date Effective	Item Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Intrastate Feb. 10, 1908 Interstate March 9, 1908	3-B Cancels 3-A	Beer Packages, empty, returned subject to estimated weights, provided in Western Classification..	BETWEEN All points named in Tariff east of Echo and Juniper, Ore.	AND Portland....Ore. East Portland " Albina..... " St. Johns.... "	27½	Carloads, minimum weights: In refrigerator cars, 12,000 lbs. In box cars, 20,000 lbs.
Do.	5-B Cancels 5-A	Boxes, Berry, Fruit; Baskets, tin bound, nested and Box or Crate Shooks, mixed C. L. NOTE.—For Box Shooks in straight carloads or mixed with Lumber, etc., see Pages 11 to 18 of Tariff.	Portland....Ore. East Portland " Albina..... " St. Johns.... "	All points named in Tariff	30	C.L.minimum weight 24,000 lbs.
Do.	7-B Cancels 7-A	Broom Corn.....	Rice's Bar, Wash. Wallula... " And points directly between	Portland....Ore. East Portland " Albina..... " St. Johns.... "	62½	C.L.minimum weight 14,000 lbs.
Do.	9-B Cancels 9-A	Cement.....	Portland....Ore. East Portland. " Albina..... " St. Johns..... "	All points named in Tariff north or east of Pendleton, Ore., and Wallula, Wash., both incl.	25	C.L.minimum weight 50,000 lbs.
Do.	10-B Cancels 10-A	CEREALS, VIZ: Graham, Rye or Whole Wheat Flour; Corn Flake, Corn Meal, Hominy, Grits, Oatmeal, Rolled Oats, Rolled Rye, Buckwheat Flour, Pancake Flour, Farina, Cerealine, Maizea, Germea, Cracked Wheat, vitos, Shredded Biscuit, Pearl Barley, Farinose, Malta Vita, Grape Nuts, Refined Grits and Cereal Breakfast Foods N. O. S. in packages. NOTE.—Postum Cereal will not be accepted at these rates: will take rate applying on Coffee and Coffee Substitutes.	BETWEEN Portland.....Ore. †East Portland " Albina..... " †St. Johns.... "	AND Shaniko.....Ore. Condon..... " Heppner..... " Elgin..... " Baker City... " And all points north of Pendleton, Ore., and Wallula, Wash., both inclusive.	25 55	Straight or mixed carloads, minimum weight 30,000 lbs. L. C. L.
			..... Do	AND Huntington, Ore., and points east of Baker City, Ore.	30 82	Straight or mixed carloads, minimum weight 30,000 lbs. L. C. L.
Do.	16-B Cancels 16-A	Fruit and Vegetables fresh	Spokane...Wash. Waverly .... " Tekoa..... " Connell .... " Moscow .... Ida. Lewiston... " Riparia....Wash. And points directly between	Portland ...Ore. †East Portland " Albina..... " †St. Johns.... "	40 60	C.L.minimum weight 20,000 lbs. L. C. L.

†Carload freight only will be received and delivered.

SPECIAL COMMODITY RATES—Continued.

Date Effective	Item Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Intrastate Feb. 10, 1908 Interstate March 9, 1908	17-B Cancels 17-A	Fruit and Vegetables fresh	GrangeCity, Wash. Pomeroy... " Dayton.... " Wallula... " Walla Walla " Athena .... Ore. Pendleton.. " And points between.	Portland ... Ore. †East Portland " Albina ..... " †St. Johns... "	30 50	C.L.minimum weight 20,000 lbs. L. C. L.
Do.	22-B Cancels 22-A	Furniture and Furniture Frames, new as described in Western Classification (except Bank, Store, Saloon and Office Furniture,) straight or mixed Carloads	Portland ....Ore. East Portland " Albina ..... " St. Johns.... "	All points named in Tariff north or east of Pendleton, Ore., and Wallula, Wash.	75	C.L.minimum weight 12,000 lbs.
Do.	18-B Cancels 18-A	Bedsteads (Iron), Cribs (Iron), Institution Beds (Iron), K. D., Metallic Couch Frames, K. D., or Metallic Folding Couches (folded flat), plain or with Brass Trimmings, Metallic Mattresses and Spring Beds (compressed) Does not apply on straight carloads of Iron Beds.	Portland ....Ore. East Portland " Albina ..... " St. Johns.... "	Riparia....Wash. Lewiston.... Ida. Burke..... " Mullan ..... " Spokane...Wash. And all main and branch line points between. Also Pomeroy .. Wash.	60	C.L.minimum weight 24,000 lbs.
Do.	19-B Cancels 19-A	Beds, Iron	..... Do.....	WallaWalla, Wash. Burke.....Ida. Mullan ..... " Spokane...Wash. And all main and branch line points between.	50	C.L.minimum weight 24,000 lbs.
Do.	23-B Cancels 23-A	Furniture, when subject to one and one-half First Class rate, as per Western Classification current at time of shipment	..... Do.....	Bolles.....Wash. Burke.....Ida. Mullan ..... " Spokane...Wash. And all main and branch line points between	175	L. C. L.
Do	24-B Cancels 24-A	Furniture, when subject to First Class rate, as per Western Classification current at time of shipment	..... Do.....	Spokane...Wash. And all points north of Simmons and Walla Walla, Wash., both incl.	107	L. C. L.
Do.	25-B Cancels 25-A	Furniture, when subject to Second Class rate or lower, as per Western Classification current at time of shipment	..... Do.....	Spokane...Wash. And all points north of Walker's and Walla Walla, Wash.	92	L. C. L.
Do.	28-B Cancels 28-A	Iron or Steel, Bar and Slab (up to but not including 24 inches in width), Rod, Hoop or Band	..... Do.....	Spokane...Wash. And all points named in Tariff north of Pendleton, Ore., and Wallula, Wash.	50	C.L.minimum weight 40,000 lbs.
Do.	30-B Cancels 30-A	Rails, Iron or Steel, and fastenings, viz., Splices, Railroad Spikes, Tie Plates, Track Bolts and Washers	..... Do.....	Spokane...Wash. And all points named in Tariff north of Pendleton, Ore., and Wallula, Wash.	50	C.L.minimum weight 40,000 lbs.

†Carload freight only will be received and delivered.

SPECIAL COMMODITY RATES—Continued.

Date Effective	Item Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Jan. 22, 1908 In Sup. 20 to I. C. C. No. 1146	34-B Cancels 34-A	Paper, Building, N. O. S., Roofing and Felt (including Indented Paper and Roofing Paper saturated with Composition and Graveled); Book, not surface-coated, N. O. S.; News, Poster; Tailors' Pattern; Wrapping, Hardware or Manila; Fruit cut in shape (not printed); Tissue; Straw; Box Board and Manila Tag Board; carriers' liability limited to 5 cents per lb.....	Portland.....Ore. East Portland " Albina..... " St. Johns..... "	Spokane...Wash. Burke.....Ida. Mullan..... " GrangeCity Wash. Bolles..... " Prescott... " And all main and branch line points between.	55	C.L.minimum weight 30,000 lbs. NOTE.—With carload shipments of Roofing Paper there may be included Roofing Cement, Tin Roofing Caps and Nails not to exceed 10% of weight of the entire carload, at the rate provided for Roofing Paper.
Intrastate Feb. 10, 1908 Interstate March 9, 1908	37-B Cancels 37-A	Sash, Doors, and Blinds; Door, Window and Screen Frames; Door and Window Screens; Carpenter's Mouldings, in the white, for Door Frames and for inside finishing; Common Pine Por.' Work, Posts and Spindles; straight or mixed carloads, or mixed with Lumber, Lath and Shingles; O. R. B. and C..... NOTE—The above provision for Sash and Doors will not apply on Sash and Doors glazed with other than common window glass, or common window glass sand blast figured, or colored (not including frosted, leaded or plate glass.)	Portland.....Ore. East Portland. " Albina..... " St. Johns..... "	All points named in Tariff north or east of Pendleton, Ore., and Wallula, Wash., former incl.	40	C.L.minimum weight 30,000 lbs.
Do.	39-B Cancels 39-A	Seed, Timothy.....	Shaniko.....Ore. Condon..... " Heppner.... " And all points named in Tariff east of Heppner Jct., Ore.....	Portland.....Ore. East Portland. " Albina..... " St. Johns.... "	35	C.L.minimum weight 30,000 lbs.
Do.	44-B Cancels 44-A	Oil, Fuel, in Tank Cars	Portland.....Ore. East Portland. " Albina..... " St. Johns.... "	Riparia....Wash. Pomeroy... " Turner.... " Walla Walla " Athena.....Ore. Pendleton... " Heppner..... " Arlington.... " Condon..... " Shaniko..... " And points between.	25	C.L.minimum weight will be full gallonage capacity of car used, based on estimated weight 7.9 lbs. per gallon Empty tank cars returned to original point of shipment Free.
				Spokane...Wash. Waverly... " Connell.... " Burke.....Ida. Mullan..... " Moscow..... " La Crosse..Wash. And points between.	30	
				Huntington..Ore. Elgin..... " Mission..... " And points between.	30	

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SPECIAL COMMODITY RATES—Continued.

Date Effective	Item Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Jan. 1, 1908 In Sup. 14 to I. C. C. No. 1146	45-A Cancels 45	Apples	Huntington . Ore. Norton . . . . . " And points between.	Portland . . . . Ore. East Portland "	40	C.L. minimum weight 30,000 lbs.
Intrastate **Feb. 10, 1908** Interstate **March 9, 1908**	57-B Cancels 57-A	Stone, including Granite, rough quarried, chiseled or ground (not lettered or polished)	*Between* Portland . . . . Ore. East Portland " Albina . . . . . " St. Johns . . . . "	*And* All points named in Tariff North or East of Umatilla, Ore., incl.	15	C.L. minimum weight 40,000 lbs.
Do.	57½-B Cancels 57½-A	Fruit and Vegetables, Fresh	Baker City . . Ore. Elgin . . . . . " Mission . . . . . " And points between.	Portland . . . . Ore. East Portland "	40	C.L. minimum weight 20,000 lbs.
Do.	58-B Cancels 58-A	Lime and Sulphur Solution	Portland . . . . Ore. East Portland " Albina . . . . . " St. Johns . . . . "	Spokane . . . Wash. Waverly . . . " Moscow . . . . . Ida. Connell . . . . Wash. Lewiston . . . . Ida. Pomeroy . . Wash. Menoken . . . " And points between. Turner . . . . Wash. Pendleton . . . Ore. Umatilla . . . . " And points between. Huntington . . Ore. Elgin . . . . . " Meacham . . . . " And points between.	36 26 36	C.L. minimum weight 30,000 lbs.
		Cattle, C. L., for grazing in transit	Baker City . . . Ore. Elgin . . . . . "	Portland . . . . Ore.	See Remarks	**May be stopped** at Echo, Ore., for grazing at a charge of $5.00 per car in addition to through rate from point of origin to destination.
Sept. 29, 1907 In Sup. 9 to I. C. C. No. 1146	59	**Above subject to following Rules and Regulations:** 1. **Way-billing.**—Agents at originating points will way-bill to feeding point at local rate, showing final destination on way-bill, together with notation that cattle are for grazing in transit. Agent at Echo will rebill to destination, at difference between local rate to feeding point and through rate to destination, plus the $5.00 per car for stopping in transit. 2. **Time Allowed.**—Above grazing in transit privilege will only apply on shipments that are forwarded to destination within *six months* after arrival at feeding point and on condition that no change in stock shall be made at feeding point, and ownership remains the same. 3. **Live Stock Contract and Release.**—Live Stock contracts will read from point of origin to final destination and bear notation that shipments are to be stopped at Echo, Ore., to permit grazing of cattle in transit. Agent at Echo shall, when cattle are turned out for feed, require the surrender by shipper, of the original Live Stock contract, which he will hold until the stock goes forward and endorse on back of same as follows: "I hereby release The O. R. & N. Co. from any loss or damage from any cause whatever that may occur to stock covered by this contract while outside of the R. R. Co.'s Stock Yards at Echo, or while being taken from or returned to said Stock Yards." This endorsement to be signed in full by the owner as shown in the Live Stock contract, or by his authorized representative in charge of the stock, and in latter case the representative should sign the full name of owner, and his own full name as agent.				

SPECIAL COMMODITY RATES—Continued.

Date Effective	Item Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Intrastate Feb. 10, 1908 Interstate March 9, 1908	62-A Cancels 31	Scrap Iron and Junk, including empty Glass Bottles (old), also Iron Car Wheels (old) for remelting	*Between* Shaniko.....Ore. Condon..... " Heppner..... " And all points East of Arlington, Ore.....	*And* Portland.....Ore. East Portland " Albina..... " St. Johns..... "	21½	C.L.minimum weight 40,000 lbs.
Do.	64-A Cancels 64	Lime, straight carloads	*Between* Portland ....Ore. East Portland " Albina..... " St. Johns .... "	*And* Simmons..Wash. Walla Walla " And all points north thereof.....	26	C.L.minimum weight 30,000 lbs.
			Between ..... Do.....	*And* Mission.....Ore Elgin ..... " Huntington.. " And points between, except as provided in Item 52 or as amended.	26	C.L.minimum weight 30,000 lbs.
Jan. 1, 1908 In Sup. 14 to I. C. C. No. 1146	65	Hides and Sheep Pelts, dry	Encina.....Ore. Huntington.. " And points between.	Portland ....Ore. East Portland " Albina..... " St. Johns .... "	125	C.L.minimum weight 15,000 lbs.
Do.	66	Honey, strained, in tin cans, boxed, released	Kamela .....Ore. Huntington.. " And points between.	..... Do.....	75	C.L.minimum weight 30,000 lbs.
Do.	67	Iron and Steel articles, viz: Bar, Band, Hoop, Rod, Slab or Tank Iron, O. R. wet or rust.....	Portland.....Ore East Portland " Albina..... " St. Johns..... "	Hilgard.....Ore. Huntington. " And points between.	62	C.L.minimum weight 30,000 lbs.
Do.	68	Paper, News.....	.....Do.....	Meacham....Ore. Huntington.. " And points between.	55	C.L.minimum weight 30,000 lbs.
Do.	69	Peanuts, (shelled or not shelled) in packages, O. R. shortage.....	.....Do.....	Lewiston.....Ida. Riparia ....Wash. And all points north thereof..... LaGrande....Ore. Huntington.. " And points between.	90	C.L.minimum weight 24,000 lbs.
Do	70	Crackers, Cakes, Fruit Biscuit, Shredded Wheat Biscuit, Pretzels and Government Hard Bread, in boxes or barrels.....	.....Do.....	Kamela..... Ore. Huntington.. " And points between.	103	Any quantity.
Do.	71	Brandy, California, in wood.....	.....Do.....	Points north of Wallula, Wash., and Pendleton, Ore. Also Pendleton...Ore. Huntington.. " And points between.	85	C.L.minimum weight 30,000 lbs.
Do.	72	Brandy, California, in glass.....	.....Do.....	.....Do.....	100	.....Do.....

SPECIAL COMMODITY RATES—Continued.

Date Effective	ITEM Nos.	COMMODITY	FROM	TO	Rates in cent per 100 lbs.	REMARKS
Jan. 1, 1908 In Sup. 14 to I. C. C. No. 1146	73	Wine, California, (except champagne) N. O. S. in bbls. or kegs	Portland....Ore East Portland " Albina..... " St. Johns..... "	Points north of Wallula, Wash., and Pendleton, Ore. Also Echo.....Ore. Huntington.. " And points between.	75	C.L.minimum weight 30,000 lbs.
Do.	74	Wine, California, (except champagne) N. O. S. in puncheons	.....Do.....	Walla Walla, Wash. And all points north. Also Bingham Springs, Ore. Huntington.. " And points between.	90	.....Do.....
Do.	75	Wine, California, (except champagne) N. O. S. in glass	..... Do.....	Points north of Wallula, Wash., and Pendleton, Ore. Also Pendleton... Ore. Huntington.. " And points between.	100	.... Do.....
Feb. 15, 1908 In Sup. 18 to I. C. C. No. 1146	78 Cancels 20	Bedsteads, Wooden, (including Wooden Folding Beds), Chiffoniers and Small Tables, Bureaus and Washstands (finished or unfinished), net cost of each piece enumerated not to exceed the following; and so receipted for, viz:: Bedsteads or Folding Beds, $12 each; Bureaus, $16 each; Chiffoniers, $18 each; Washstands, $6 each; Small Tables, $4 each	.....Do.....	Spokane, Wash., and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	60	C.L.minimum weight 20,000 lbs.
Intrastate Feb. 3, 1908 Interstate Feb. 17, 1908 In Sups. 19 and 21 to I.C. C. No. 1146	79	Beet Sugar Refuse, in barrels	La Grande...Ore.	Portland.... Ore.	30	C.L.minimum weight 40,000 lbs.
Intrastate Feb. 10, 1908 Interstate March 9, 1908	80	Syrup (Corn, Glucose, Maple and Rock Candy), Molasses; Glucose (in barrels); Glucose Jelly (in barrels, kegs, kits or pails)	Portland ....Ore. East Portland " Albina..... " St. Johns.... "	Baker City...Ore. Huntington.. " And points between.	65	C.L.minimum weight 30,000 lbs.
Do.	81	Graders' Outfits, consisting of Dump Cars, Scrapers, Rails, Wagons, Tools, Tents and Fixtures	..... Do.....	Mission .....Ore. Huntington.. " And points between. Also Athena.....Ore. Spokane...Wash. And points directly between.	50	C.L.minimum weight 30,000 lbs.

Date Effective	
Sept. 29, 1907 In Sup. 9 to I. C. C. No. 1146	Refer to Special Rule No. 2, Page 27 of Tariff, covering Grain Rates and Minimum Weights, and **Add** the following: **Note No. 2.**—Grain originating at points on the Snake River handled by boat to Riparia, Wash., and transferred to cars by this Company, will be subject to minimum weight as above provided, except that where the cars are under-loaded to suit Company's convenience in furnishing proper equipment, actual weight will govern, provided that the entire shipment shall consist of not less than 30,000 lbs.
Jan. 4, 1908 In Sup. 13 to I. C. C. No. 1146	Refer to second Commodity column, pages 11 to 18, inclusive, of Tariff and **Correct** minimum weight on Potatoes or Onions, straight or mixed carloads, to read 30,000 lbs.
Do.	Refer to General Rules and Conditions, Page 30 of Tariff, and **Correct** Rule 18 to read as follows: 18. **Minimum Charge.**—The minimum charge for any single shipment will be the charge for 100 lbs. at the class rate to which commodity belongs. In case shipment is composed of more than one class of freight, the minimum charge will be the charge for 100 lbs. of article taking highest rate, but not more than the charge for 100 lbs. at second class rate, unless actual weight at actual rate makes more. EXCEPTION: In no cases will the minimum charge be less than 25 cents. File 9474.
Jan. 1, 1908 In Sup. 14 to I. C. C. No. 1146	Refer to Rule 30, Page 31 of Tariff, and **Correct** same to read as follows: 30. **Returned Shipments.**—One-half tariff rates current at time of reshipment, will apply on shipment of goods returned on account of being defective, unsalable or refused by consignees, subject to the following rules and conditions: *a.* No shipment will be returned until all charges have been paid or fully guaranteed. *b.* Agents will make proper notation on way-bills covering shipments made under these rules and will assure themselves that same are complied with. *c.* The established minimum charge as provided herein to prevail in all cases, no reduction to be made therefrom. Shipments loaded on open cars will be subject to minimum charge of 5,000 lbs. at first-class rate as per rule 17 of Western Classification No. 43, I. C. C. No. 1, supplements thereto or reissues thereof.
Nov. 15, 1907 In Sup. 11 to I. C. C. No. 1146	Refer to Item No. 13, Page 22 of Tariff, naming rate on Emigrant Movables from Grants, Ore., to Portland, Ore., also Rule 31, page 31 of Tariff, and **Cancel** same. After date of cancellation Class Rates, governed by Western Classification, will apply. File 7545.
Do.	Refer to Rules 23, 24, 25, 26, and 27, page 30 of Tariff, and **Cancel** same, substituting therefor the following: **Diversions and Terminal Charges.**—Delivery, Demurrage Diversion or Reconsignment of Freight, Loading and Unloading, Shipper's Count, Storage and other Terminal charges, will be governed by Local Freight Tariff No. L-579, I. C. C. No. 1262, supplements thereto or reissues thereof. File 8058-B
Jan. 1, 1908 In Sup. 14 to I. C. C. No. 1146	Refer to Rule 19, Page 30 of Tariff, "Use of Class Rates," and **Cancel** same.
Do.	Refer to Rules 33 and 41, Page 31 of Tariff, under "Application of Rates" and **Cancel** same.
Do.	Refer to item on Page 19 of Tariff reading as follows: "Lime—Class D, Maximum 26 cts. per 100 lbs." and **Cancel** same.

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Date Effective	
Intrastate **Feb. 10, 1908** Interstate **March 9, 1908**	Refer to Page 19 of Tariff, and **Add** the following: Lime ..... Class D.
Do.	Refer to Page 19 of Tariff and **Add** the following under "Exceptions to Classification": Governing Class Rates shown on Pages 4 to 10.
Do.	Refer to Item No. 6, Page 21 of Tariff, naming rate on Brick and Clay, and **Cancel** same. After date of cancellation rates will be found transferred to Sup. 9 to Freight Tariff No. L-539, I. C. C. No. 1172. Files 11169-330
Do.	Refer to clause, as amended, on Title Page of Tariff and Supplement No. 8, originally reading: "Rates named herein must not be exceeded on similar shipments in same direction between intermediate points on direct line," and **Cancel** same.
Do.	Refer to Page 30 of Tariff, and **Add** the following Rule: 19-A. **Use of Class Rates.**—On traffic moving **locally** between points within the **State of Oregon,** where the use of Class Rates named in the tariff makes lower rates than are otherwise provided therein, such lower rates will govern. **Does not apply on Interstate traffic.**
	STATION CHANGES.
Sept. 9, 1907	**Correct** ‡*Hot Lake, Ore., Index No. 107, Page 6 of Tariff, to read *Hot Lake, Ore.
Do.	**Add** †*Mitchell, Ore., Index No. 17-A, Pages 4 and 11 of Tariff, at rates provided for Menominee.
Oct. 28, 1907	**Correct** *Guy, Wash., Index No. 237, Pages 8 and 17 of Tariff, to read Guy, Wash.
Nov. 8, 1907	**Correct** ‡*Enaville, Idaho, Index No. 273, Page 9 of Tariff, to read *Enaville, Idaho.
Nov. 29, 1907	**Correct** Latourelle, Ore., Index No. 8, Pages 4 and 11 of Tariff, to read *Latourelle, Ore.
Dec. 1, 1907	**Add** *Dumas Siding, Wash., Index No. 164-A, Page 7 of Tariff, at rates provided for Long's, Wash. NOTE.—Freight handled during apple season only.
Do.	**Add** †*Ilse, Wash., Index No. 300-A, Pages 10 and 18 of Tariff, at rates provided for East Spokane, Wash.
Do.	**Add** †*Lockwood, Wash., Index No. 297-A, Pages 10 and 18 of Tariff, at rates provided for Freeman, Wash.
Dec. 16, 1907	**Add** Pilot Rock Junction, Ore., Index No. 80-A, Pages 5 and 13 of Tariff, at rates provided for Pendleton. NOTE.—Junction point only. Freight will not be handled.
Dec. 30, 1907	**Correct** Lime, Ore., Index No. 122, Pages 6 and 14 of Tariff, to read *Lime, Ore.

Effective { Intrastate February 10, 1908. / Interstate March 9, 1908.

Refer to Page 31 of Tariff and **Add** the following:

45. **Intermediate Application.**—The rates stated in Tariff, or as amended, will apply at intermediate points not having specific rates, unless a lower rate to the same point is arrived at by use of the distance tariff shown on Pages 11, 12 and 13 of this Supplement, in which event the distance tariff rate so arrived at will apply.

EXCEPTIONS TO CLASSIFICATION.

Governing Distance Class Rates shown on Pages 11, 12 and 13 of this Supplement.

Coal, minimum weight 30,000 lbs. ..... Class D.

Coke, minimum weight 30,000 lbs. ..... Class D.

Grain, Flax Seed, Flour and Mill Feed, straight or mixed carloads, minimum weight as per rule 2, page 27 of Tariff ..... Class D.

Hay or Straw in compressed bales, minimum weight as per rule 1, page 27 of Tariff. Class E

Junk as per Western Classification, including empty glass bottles (old) in mixed carloads, minimum weight 30,000 lbs ..... Class C.

Lime in bulk, or in barrels, carloads, estimated weight when in barrels, 200 lbs. per barrel, minimum weight 30,000 lbs ..... Class E.

Live Stock, minimum weight 20,000 lbs. per 30 foot car ..... Class D.
For Rates on cars exceeding 30 feet see Rule 8, Page 28 of Tariff.

Lumber, Shingles, Poles, Piling, Timbers and the following articles manufactured therefrom: Bark, hemlock; blocks, base, corner and head; box shooks; columns; cross arms; eave troughs; fence posts; guttering; ladder material; lath; match splints; mouldings (carpenter's); pickets; picture backing; pipe material; staves and headings; tank material; telegraph and telephone brackets; ties and tubing, pump. Minimum weight as per rule 17, page 29 of tariff ..... Class E. (See Note.)

NOTE.—Will not apply from or to Snake River Stations or Landings.—Western Classification will govern.

File 1007a.

Salt, minimum weight 30,000 lbs ..... Class B.

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DISTANCE RATES.

Between Intermediate points when lower than rates stated in tariff, as provided in Rule 45.

Governed by Exceptions to Classification shown on Page 10 of this Supplement.

DISTANCES	CLASS RATES In cents per 100 lbs.									
	1	2	3	4	5	A	B	C	D	E
5 miles or less	10	9	7	6	5	5	4	3	3	2
Over 5 miles, not over 10 miles	14	12	10	8	7	7	6	4	4	3
" 10 " " 15 "	18	15	13	11	9	9	7	5	5	4
" 15 " " 20 "	22	19	15	13	11	11	9	7	6	4
" 20 " " 25 "	25	21	18	15	13	13	10	8	6	5
" 25 " " 30 "	28	24	20	17	14	14	11	8	7	6
" 30 " " 35 "	31	26	22	19	16	16	12	9	8	6
" 35 " " 40 "	34	29	24	20	17	17	14	10	9	7
" 40 " " 45 "	37	31	26	22	19	19	15	11	9	7
" 45 " " 50 "	40	34	28	24	20	20	16	12	10	8
" 50 " " 55 "	42	36	29	25	21	21	17	13	11	8
" 55 " " 60 "	44	37	31	26	22	22	18	13	11	9
" 60 " " 65 "	46	39	32	28	23	23	18	14	12	9
" 65 " " 70 "	48	41	34	29	24	24	19	14	12	10
" 70 " " 75 "	50	43	35	30	25	25	20	15	13	10
" 75 " " 80 "	52	44	36	31	26	26	21	16	13	10
" 80 " " 85 "	54	46	38	32	27	27	22	16	14	11
" 85 " " 90 "	56	48	39	34	28	28	22	17	14	11
" 90 " " 95 "	58	49	41	35	29	29	23	17	15	12
" 95 " " 100 "	60	51	42	36	30	30	24	18	15	12
" 100 " " 105 "	62	53	43	37	31	31	25	19	16	12
" 105 " " 110 "	64	54	45	38	32	32	26	19	16	13
" 110 " " 115 "	66	56	46	40	33	33	26	20	17	13
" 115 " " 120 "	68	58	48	41	34	34	27	20	17	14
" 120 " " 125 "	70	60	49	42	35	35	28	21	18	14
" 125 " " 130 "	72	61	50	43	36	36	29	22	18	14
" 130 " " 135 "	74	63	52	44	37	37	30	22	19	15
" 135 " " 140 "	76	65	53	46	38	38	30	23	19	15
" 140 " " 145 "	78	66	55	47	39	39	31	23	20	16
" 145 " " 150 "	80	68	56	48	40	40	32	24	20	16

Page 13 of Sup. No. 22

DISTANCE RATES.—Continued.

DISTANCES	CLASS RATES in cents per 100 lbs.									
	1	2	3	4	5	A	B	C	D	E
Over 150 miles, not over 155 miles.....	82	70	57	49	41	41	33	25	21	16
" 155 " " 160 "	84	71	59	50	42	42	34	25	21	17
" 160 " " 165 "	86	73	60	52	43	43	34	26	22	17
" 165 " " 170 "	88	75	62	53	44	44	35	26	22	18
" 170 " " 175 "	90	77	63	54	45	45	36	27	23	18
" 175 " " 180 "	92	78	64	55	46	46	37	28	23	18
" 180 " " 185 "	94	80	66	56	47	47	38	28	24	19
" 185 " " 190 "	96	82	67	58	48	48	38	29	24	19
" 190 " " 195 "	98	83	69	59	49	49	39	29	25	20
" 195 " " 200 "	100	85	70	60	50	50	40	30	25	20
" 200 " " 205 "	102	87	71	61	51	51	41	31	26	20
" 205 " " 210 "	104	88	73	62	52	52	42	31	26	21
" 210 " " 215 "	106	90	74	64	53	53	42	32	27	21
" 215 " " 220 "	108	92	76	65	54	54	43	32	27	22
" 220 " " 225 "	110	94	77	66	55	55	44	33	28	22
" 225 " " 230 "	112	95	78	67	56	56	45	34	28	22
" 230 " " 235 "	114	97	80	68	57	57	46	34	29	23
" 235 " " 240 "	116	99	81	70	58	58	46	35	29	23
" 240 " " 245 "	118	100	83	71	59	59	47	35	30	24
" 245 " " 250 "	120	102	84	72	60	60	48	36	30	24
" 250 " " 255 "	122	104	85	73	61	61	49	37	31	24
" 255 " " 260 "	124	105	87	74	62	62	50	37	31	25
" 260 " " 265 "	126	107	88	76	63	63	50	38	32	25
" 265 " " 270 "	128	109	90	77	64	64	51	38	32	26
" 270 " " 275 "	130	111	91	78	65	65	52	39	33	26
" 275 " " 280 "	132	112	92	79	66	66	53	40	33	26
" 280 " " 285 "	134	114	94	80	67	67	54	40	34	27
" 285 " " 290 "	136	116	95	82	68	68	54	41	34	27
" 290 " " 295 "	138	117	97	83	69	69	55	41	35	28
" 295 " " 300 "	140	119	98	84	70	70	56	42	35	28
" 300 " " 305 "	141	120	99	85	71	71	56	42	35	28
" 305 " " 310 "	142	121	99	85	71	71	57	43	36	28

DISTANCE RATES.—Continued.

DISTANCES	CLASS RATES In cents per 100 lbs.									
	1	2	3	4	5	A	B	C	D	E
Over 310 miles, not over 315 miles	143	122	100	86	72	72	57	43	36	29
" 315 " " 320 "	144	122	101	86	72	72	58	43	36	29
" 320 " " 325 "	145	123	102	87	73	73	58	44	36	29
" 325 " " 330 "	146	124	102	88	73	73	58	44	37	29
" 330 " " 335 "	147	125	103	88	74	74	59	44	37	29
" 335 " " 340 "	148	126	104	89	74	74	59	44	37	30
" 340 " " 345 "	149	127	104	89	75	75	60	45	37	30
" 345 " " 350 "	150	128	105	90	75	75	60	45	38	30
" 350 " " 355 "	151	128	106	91	76	76	60	45	38	30
" 355 " " 360 "	152	129	106	91	76	76	61	46	38	30
" 360 " " 365 "	153	130	107	92	77	77	61	46	38	31
" 365 " " 370 "	154	131	108	92	77	77	62	46	39	31
" 370 " " 375 "	155	132	109	93	78	78	62	47	39	31
" 375 " " 380 "	156	133	109	94	78	78	62	47	39	31
" 380 " " 385 "	157	133	110	94	79	79	63	47	39	31
" 385 " " 390 "	158	134	111	95	79	79	63	47	40	32
" 390 " " 395 "	159	135	111	95	80	80	64	48	40	32
" 395 " " 400 "	160	136	112	96	80	80	64	48	40	32
" 400 " " 410 "	162	138	113	97	81	81	65	49	41	32
" 410 " " 420 "	164	139	115	98	82	82	66	49	41	33
" 420 " " 430 "	166	141	116	100	83	83	66	50	42	33
" 430 " " 440 "	168	143	118	101	84	84	67	50	42	34
" 440 " " 450 "	170	145	119	102	85	85	68	51	43	34
" 450 " " 460 "	172	146	120	103	86	86	69	52	43	34
" 460 " " 470 "	174	148	122	104	87	87	70	52	44	35
" 470 " " 480 "	176	150	123	106	88	88	70	53	44	35
" 480 " " 490 "	178	151	125	107	89	89	71	53	45	36
" 490 " " 500 "	180	153	126	108	90	90	72	54	45	36

NOTE.—In computing distance rates shown above, distances shown in Official Distance Table, Circular No. 441, I. C. C. No. 693, supplements thereto or reissues thereof, will govern. When distances are not so shown, they will be arrived at by use of mileage shown in Circular, List of Stations, No. 580, I. C.C. No. 1227, supplements thereto or reissues thereof, and rates to or from stations not shown in either of the foregoing Circulars will be the rate applying to or from the next point beyond.

COMMODITY INDEX.

COMMODITY Page

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	Index Nos.	Miles from Portland	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, ORE., AND	CLASS RATES In cents per 100 lbs.									
				1	2	3	4	5	A	B	C	D	E
MAIN LINE	1	8	†*Montavilla ..... Ore.	10	9	8	7	7	7	6	4	4	3
	2	9	†*Quarry ..... "										
	3	10	*Clarnie ..... "										
	4	15	Fairview ..... "	15	13	12	10	8	9	7	5	5	4
	5	18	Troutdale ..... "	15	13	12	10	8	10	8	5	5	4
	6	23	*Corbett ..... "	15	13	12	10	8	10	9	7	6	5
	7	25	*Rooster Rock ..... "	15	13	12	10	8	10	9	7	6	5
	8	26	Latourelle ..... "	15	13	12	10	8	10	10	8	7	6
	9	29	Bridal Veil ..... "										
	10	33	*Oneonta ..... "	15	13	12	10	8	12	10	9	8	6
	11	36	†*Dodson's ..... "	15	13	12	10	8	12	10	9	9	7
	12	38	*Warrendale ..... "	15	13	12	10	8	12	10	10	9	7
	13	39	†*Miller's ..... "										
	14	41	Bonneville ..... "										
	15	45	Cascade Locks ..... "										
	16	52	Wyeth ..... "	18	15	13	12	9	13	10	10	10	7
	17	58	*Viento ..... "	20	16	14	12	9	13	10	10	10	7
	18	61	*Menominee ..... "	20	16	14	12	9	13	10	10	10	7
	19	62	†*Ruthton ..... "										
	20	66	Hood River ..... "	20	17	15	12	9	13	12	10	10	7
	21	72	Mosier ..... "	25	20	18	15	10	15	13	12	10	7
	22	79	*Rowena ..... "										
	23	87	**The Dalles** ..... "										
	24	90	*Seuferts ..... "	27	22	20	17	12	15	13	12	10	7
	25	95	*Summit ..... "	30	25	23	19	14	16	14	12	10	7
	26	99	*Tumwater ..... "	34	28	25	21	16	16	15	12	10	7
	27	99	*Celilo ..... "										
	28	103	*Des Chutes ..... "	38	32	28	23	18	18	16	12	10	8
	29	107	**Biggs** ..... "	42	35	30	25	21	21	17	13	11	8
SHANIKO BRANCH	30	112	*Gibson ..... "	45	40	35	28	22	24	20	16	13	10
	31	114	*Sinks ..... "	48	42	37	30	23	27	22	18	15	12
	32	117	Wasco ..... "	52	44	38	32	24	29	24	20	17	13
	33	121	*Klondyke ..... "	55	46	40	34	26	31	25	21	18	14
	34	123	*Sandon ..... "	57	48	41	35	27	32	27	21	18	14
	35	128	†*Hay Canyon ..... "	60	51	44	37	29	34	28	22	18	14
	36	129	*McDonald ..... "										
	37	132	*DeMoss ..... "	60	51	44	37	29	34	28	22	19	15
	38	135	Moro ..... "	60	54	46	39	30	35	29	22	19	15
	39	138	*Erskinville ..... "	62	56	47	40	31	36	30	23	19	15
	40	146	Grass Valley ..... "	65	57	49	41	32	37	31	24	20	16
	41	153	*Bourbon ..... "	67	61	52	44	34	39	32	25	21	16
	42	160	*Kent ..... "	70	63	53	45	35	40	33	25	21	17
	43	165	*Wilcox ..... "	72	64	54	46	36	41	34	26	22	17
	44	177	**Shaniko** ..... "	75	67	57	49	38	43	35	28	23	18
Main Line	45	110	Grants ..... "	45	38	32	27	22	22	18	14	11	9
	46	112	*Rufus ..... "	47	40	33	28	23	23	19	14	12	9
	47	117	*John Day's ..... "	51	43	36	31	24	24	21	16	13	11
	48	122	*Squally Hook ..... "	55	46	39	34	26	26	22	17	14	11

*No agent. Freight must be prepaid.
†Carload freight only will be received and delivered.

	Index Nos.	Miles from Portland	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, ORE., AND	CLASS RATES In cents per 100 lbs.									
				1	2	3	4	5	A	B	C	D	E
Main Line	49	126	*Quinton ..... Ore.	59	49	41	35	27	27	24	18	15	12
	50	133	*Blalock's ..... "	62	52	44	37	29	29	25	19	16	13
	51	141	**Arlington** ..... "	65	55	46	39	31	31	26	20	16	13
Condon Branch	52	143	*Eddy ..... "	69	58	49	41	32	36	30	23	19	16
	53	149	*Shutler's ..... "	71	59	50	43	33	38	31	24	20	16
	54	157	*Rock Creek ..... "	73	61	52	44	34	39	32	25	21	17
	55	161	*Barnett ..... "	75	63	53	45	35	40	33	26	22	17
	56	166	*Mikkalo ..... "	77	64	54	46	36	41	34	26	22	17
	57	170	*Clem ..... "	79	66	56	47	37	42	35	26	22	18
	58	174	*Speece ..... "	81	68	57	49	38	43	35	27	23	18
	59	178	*Gwendolen ..... "	83	69	59	50	39	44	36	28	23	18
	60	186	**Condon** ..... "	85	71	60	51	40	45	37	29	24	19
Main Line	61	150	*Willows ..... "	70	60	50	43	33	33	28	21	18	14
	62	151	**Heppner Junction** ..... "										
Heppner Branch	63	158	*Rhea ..... "	75	63	53	45	35	37	30	23	19	15
	64	166	*Cecil's ..... "	77	64	54	46	36	40	31	23	19	15
	65	171	*Morgan ..... "	79	66	55	47	37	42	33	24	20	16
	66	180	Ione ..... "	83	69	58	50	39	44	35	25	21	17
	67	182	*Jordan ..... "	83	69	58	50	39	44	35	26	21	18
	68	188	*Lexington ..... "	87	73	61	52	41	46	37	28	23	19
	69	197	**Heppner** ..... "	89	74	62	53	42	47	39	30	25	20
MAIN LINE	70	161	*Castle Rock ..... "	75	63	53	45	35	35	30	23	19	15
	71	170	*Coyote ..... "	78	65	55	47	37	37	32	24	20	16
	72	171	*Fruit ..... "	80	67	56	48	38	38	32	24	20	16
	73	179	Irrigon ..... "	83	69	58	50	39	39	38	25	21	17
	74	186	**Umatilla** ..... "	85	71	60	51	40	40	34	26	21	17
	75	193	*Hermiston ..... "	89	74	62	53	42	42	36	27	22	18
	76	201	*Foster's ..... "	91	76	64	55	43	43	36	27	23	18
	77	205	Echo ..... "	93	78	65	56	44	44	37	28	23	19
	78	211	*Nolin ..... "	95	80	67	57	45	45	38	29	24	19
	79	214	*Yoakum ..... "	97	81	68	58	46	46	39	29	24	19
	80	222	*Barnhart ..... "	99	83	69	59	47	47	40	30	25	20
	81	230	**Pendleton** ..... "	103	86	72	62	49	49	41	31	25	20
	82	236	*Mission ..... "	105	88	74	63	50	50	42	32	26	21
	83	242	*Cayuse ..... "	107	90	75	64	51	51	43	32	27	22
	84	247	*Thorn Hollow ..... "	109	91	76	65	52	52	44	33	27	22
	85	252	Bingham Springs ..... "	111	93	78	67	53	53	44	33	28	22
	86	263	*North Fork ..... "	115	97	81	68	55	55	46	35	29	23
	87	270	†*Allen's ..... "	118	99	82	70	56	56	47	36	30	24
	88	272	*Huron ..... "	119	100	83	71	57	57	48	36	30	24
	89	275	†*Porter ..... "	121	102	85	73	58	58	48	36	30	24
	90	280	Meacham ..... "	123	103	86	74	59	59	49	37	31	25
	91	281	†*Nibley ..... "										
	92	282	†*Murdock's ..... "										
	93	286	Kamela ..... "	125	105	88	75	60	60	50	38	31	25
	94	288	†*Spring ..... "	127	107	89	76	61	60	51	38	32	25
	95	293	†*Glover ..... "	129	108	90	77	62	60	52	39	32	26
	96	296	†*Five Points ..... "										
	97	297	Hilgard ..... "										

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	Index Nos.	Miles from Portland	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, ORE., AND		CLASS RATES in cents per 100 lbs.									
					1	2	3	4	5	A	B	C	D	E
Main Line	98	301	*Perry	Ore.	131	110	92	79	63	60	52	39	33	26
	99	305	**La Grande**	"	133	114	94	80	64	60	52	42	33	26
Elgin Branch	100	307	*Island City	"	133	114	94	80	64	62	54	43	35	26
	101	309	†*Pierce's	"	135	114	95	80	65	65	54	43	36	26
	102	310	†*Conley	"	135	114	95	80	65	65	55	43	36	26
	103	313	*Alicel	"	135	115	95	80	65	65	55	43	36	26
	104	317	Imbler	"	135	115	95	80	65	65	55	43	36	26
	105	320	*Rhinehart	"	135	117	95	80	65	65	55	43	36	26
	106	325	**Elgin**	"	135	119	95	80	65	65	55	44	36	26
MAIN LINE	107	313	‡*Hot Lake	"										
	108	314	†*Nodine	"	135	115	95	80	65	60	53	43	33	26
	109	317	**Union**	"										
	110	327	*Telocasset	"	135	119	95	80	65	60	55	44	35	26
	111	336	North Powder	"	135	120	95	80	65	60	55	44	35	26
	112	341	†*Huchinson	"										
	113	346	Haines	"	135	120	95	80	65	60	55	45	36	26
	114	356	**Baker City**	"	135	120	95	80	65	60	55	46	36	26
	115	362	*Norton	"	137	125	95	80	65	63	55	46	36	26
	116	366	†*Encina	"	138	127	95	81	66	64	55	46	36	26
	117	369	Pleasant Valley	"										
	118	376	*Unity	"										
	119	383	Durkee	"										
	120	388	†*Nelson's	"										
	121	392	*Weatherby	"	140	130	95	82	67	65	55	46	36	26
	122	399	*Lime	"										
	123	400	*Jennings	"										
	124	404	**Huntington**	"										
Pendleton Branch	125	235	*Saxe	"	105	88	74	63	50	50	42	34	28	20
	126	238	*Havana	"	107	90	75	64	51	51	43	35	26	20
	127	241	*Eastland	"	107	90	75	64	51	51	43	35	26	20
	128	244	Adams	"	109	91	76	65	52	52	44	35	26	20
	129	249	**Athena**	"	109	91	77	65	52	52	44	36	26	20
	130	252	Weston	"	109	91	77	65	52	52	44	36	26	20
	131	254	*Downing	"	109	91	77	65	52	52	45	36	26	20
	132	258	*Blue Mountain	"										
	133	261	*Bates	"										
	134	255	Milton	"	109	91	77	65	52	52	46	36	26	20
	135	251	*Spofford	"										
MAIN LINE.	136	197	*Cold Springs	"	89	74	62	53	42	42	36	27	22	18
	137	200	†*Sand	"	91	76	64	55	43	43	36	27	23	18
	138	206	*Juniper	"	93	78	65	56	44	44	37	28	23	19
	139	213	**Wallula**	Wash.	97	81	68	58	46	46	39	29	24	19
	140	223	*Humorist	"	101	85	71	61	48	48	40	30	25	20
	141	229	*Snake River	"	103	88	72	62	49	49	41	31	26	21
	142	236	*Page	"	105	88	74	63	50	50	42	32	26	21
	143	244	*Simmons	"	109	91	76	65	52	52	44	33	27	22
	144	247	*Walker's	"	109	91	76	65	52	52	44	33	27	22
	145	253	*Scott	"	113	95	79	68	54	54	45	34	28	23

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‡Less carload freight only will be received and delivered.

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	Index Nos.	Portland Miles from	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, ORE., AND	CLASS RATES In cents per 100 lbs.									
				1	2	3	4	5	A	B	C	D	E
MAIN LINE	146	261	*Moore.....Wash.	115	97	81	69	55	55	46	35	29	23
	147	269	*Ayer..... "	119	100	83	71	57	57	48	36	30	24
	148	278	†*Grange City..... "	123	103	86	74	59	57	49	36	31	25
	149	279	*Grange City Jct..... "	123	103	86	74	59	57	50	37	31	25
	150	223	*Divide..... "	101	85	71	61	48	48	41	32	25	20
	151	228	*Touchet..... "	103	86	72	62	49	49	42	33	26	20
	152	232	*Lowden's..... "	103	86	72	62	49	49	42	33	26	20
	153	239	*Whitman..... "	107	90	75	64	51	51	44	35	26	20
	154	242	†*Blalock..... "	107	90	75	64	51	51	46	35	26	20
	155	244	**Walla Walla**..... "	109	91	77	65	52	52	46	36	26	20
	156	249	*Russell's..... "	111	93	78	67	53	53	46	36	27	21
	157	251	*Valley Grove..... "	111	93	78	67	53	53	46	36	27	21
	158	254	*Hadley..... "	113	95	79	68	54	54	46	36	28	22
	159	257	*Berryman..... "	113	95	79	68	54	54	46	36	28	22
	160	259	*Ennis..... "	115	97	81	69	55	55	46	36	29	23
	161	264	Prescott..... "	117	98	82	70	56	56	47	36	29	23
	162	269	*Bolles..... "	119	100	83	71	57	57	48	38	29	23
Dayton Branch	163	272	**Waitsburg**..... "	119	100	83	71	57	55	48	39	29	23
	164	275	***Huntsville**..... "	121	102	85	73	58	57	48	39	30	24
	165	279	***Longs**..... "	123	103	86	74	59	57	49	40	30	25
	166	282	**Dayton**..... "	123	103	86	74	59	57	49	40	30	25
Turner Branch	167	292	*Whetstone..... "	127	107	89	76	61	59	51	41	31	25
	168	294	***Turner**..... "	129	108	90	77	62	60	52	42	32	26
Main Line	169	273	*Menoken..... "	121	102	85	73	58	54	48	36	30	24
	170	281	*Alto..... "	123	103	86	74	59	54	49	37	31	25
	171	286	*Relief..... "	125	105	88	75	60	57	50	38	31	25
	172	283	**Starbuck**..... "	125	105	88	75	60	57	50	38	31	25
Pomeroy Branch	173	291	*Delaney..... "	127	107	89	76	61	58	51	38	32	25
	174	294	*Jackson..... "	129	108	90	77	62	58	52	39	32	26
	175	297	*Chard..... "	129	108	90	77	62	58	52	39	32	26
	176	307	*Zumwalt..... "	133	112	93	80	64	58	53	40	33	26
	177	313	**Pomeroy**..... "	135	115	95	80	65	58	53	41	34	26
Main Line	178	283	**Riparia**..... "	125	105	88	75	60	57	50	38	31	25
SNAKE RIVER ROUTE	179	291	*Malcolm's..... "										
	180	292	*Johnson's..... "										
	181	294	*New York Bar..... "										
	182	296	*Diamond Point..... "										
	183	299	*Central Ferry..... "										
	184	302	*Parrington's..... "										
	185	303	*Miller's..... "										
	186	308	*Penewawa..... "	135	120	95	80	65	65	55	44	36	26
	187	309	*Rice's..... "										
	188	309	*Long Hollow..... "										
	189	311	*Cromwell's..... "										
	190	315	*Indian Bar..... "										
	191	315	*Wade's..... "										
	192	317	*Ilia..... "										

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	Index Nos.	Miles from Portland	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, ORE., AND	CLASS RATES In cents per 100 lbs. 1	2	3	4	5	A	B	C	D	E
SNAKE RIVER ROUTE	193	320	*Almota ..... Wash.										
	194	322	*Davis ..... "										
	195	326	*Offield's .. .. "										
	196	326	*Kuhn's ..... "										
	197	327	*Wawawai ..... "										
	198	328	*May View ..... "										
	199	330	*Kennedy's ..... "										
	200	330	*Granite Point ..... "										
	201	332	*Truax ..... "										
	202	332	*Smith's ..... "										
	203	334	*Bishop's ..... "	135	120	95	80	65	65	55	44	36	26
	204	335	*Kelly's ..... "										
	205	336	*Blyton's ..... "										
	206	337	*Taylor's .. .. "										
	207	339	*Judkin's ..... "										
	208	340	*Squall John's ..... "										
	209	344	*Steptoe ..... "										
	210	347	*Alpowai .. .. "										
	211	350	*Evans ..... "										
	212	353	*Boom Boy ..... "										
	213	356	**Lewiston** ..... Idaho										
Main Line	214	284	†*Texas City ..... Wash.	125	105	88	75	60	57	50	39	31	25
	215	289	*Canyon ..... "	125	107	89	76	61	57	50	39	31	25
	216	297	*Hay ..... "	125	108	90	77	62	57	50	39	31	25
	217	302	*Meeker ..... "	125	110	90	79	63	57	50	39	31	25
	218	308	**LaCrosse** ..... "	125	110	90	80	65	57	50	39	31	25
Connell Branch	219	313	*Pampa .. .. "										
	220	321	*Hooper ..... "										
	221	332	Washtucna ..... "										
	222	337	*McAdams ..... "										
	223	346	Kahlotus ..... "	125	110	90	80	65	57	50	39	31	25
	224	350	*Estes ..... "										
	225	354	*Sulphur ... . "										
	226	359	*Curry ..... "										
	227	361	**Connell** ..... "	See tariff No. L-44 I. I.					C. C. No. 981.				
Main Line	228	319	**Winona** ..... "	130	115	90	80	65	60	50	41	33	26
	229	324	Endicott ..... "	132	117	92	80	65	60	50	41	33	26
	230	331	*Lee ..... "	134	119	92	80	65	60	50	41	34	26
	231	335	*Diamonds ..... "	135	120	93	80	65	60	50	41	34	26
	232	339	*Mockonema ..... "	135	120	94	80	65	60	50	41	34	26
	233	342	*Crest ..... "	135	120	95	80	65	60	50	41	34	26
	234	344	**Colfax** ..... "	135	120	95	80	65	60	50	41	34	26
Moscow Branch	235	352	*Riverside ..... "										
	236	354	*Shawnee .. .. "										
	237	357	*Guy ..... "	135	120	95	80	65	65	55	44	36	26
	238	360	*Armstrong .. .. "										
	239	363	**Pullman** ..... "										

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	Index Nos.	Miles from Portland	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, ORE., AND	CLASS RATES In cents per 100 lbs.									
				1	2	3	4	5	A	B	C.	D	E
Moscow Branch	240	364	*Whitlow ..... Wash.	135	120	95	80	65	65	55	44	36	26
	241	365	*Holland ..... "										
	242	368	*Garrison ..... "										
	243	372	**Moscow** ..... Idaho										
Main Line	244	350	*Glenwood ..... Wash.	135	120	95	80	65	65	55	44	36	26
	245	356	Elberton ..... "										
	246	362	**Garfield** ..... "										
	247	365	†*Walter's ..... "										
	248	371	**Farmington** ..... "										
Pleasant Valley Branch	249	330	*Willada ..... "	132	117	92	80	65	61	51	41	33	26
	250	337	St. John ..... "	132	117	92	80	65	61	51	41	33	26
	251	344	*Sunset ..... "	135	120	95	80	65	62	52	43	33	26
	252	350	Thornton ..... "	135	120	95	80	65	63	53	44	34	26
	253	352	†*Coman ..... "	135	120	95	80	65	65	55	44	36	26
	254	358	**Oakesdale** ..... "	135	120	95	80	65	65	55	44	36	26
	255	361	*Fletcher ..... "										
	256	364	*Warner ..... "										
Main Line	257	366	*Seltice ..... "	135	120	95	80	65	65	55	44	36	26
	258	372	**Tekoa** ..... "										
MULLAN BRANCH	259	375	*Tilma ..... "	137	122	95	80	65	65	55	46	36	26
	260	379	*Lovell ..... Idaho										
	261	384	*Watts ..... "	139	124	95	80	65	65	55	46	36	26
	262	388	*Plummer ..... "										
	263	395	*Chatcolet ..... "	144	129	95	81	66	65	55	46	36	26
	264	400	*Lacon ..... "										
	265	402	**Harrison** ..... "										
	266	406	*Springston ..... "										
	267	413	*Medimont ..... "	146	131	95	81	66	65	55	46	36	26
	268	417	*Lane ..... "										
	269	421	*Rose Lake ..... "										
	270	424	*Dudley ..... "										
	271	429	*Cataldo ..... "	148	133	95	82	67	65	55	46	36	26
	272	433	*Kingston ..... "										
	273	434	‡*Enaville ..... "										
	274	435	‡*Jarva ..... "										
	275	436	†*Pine Creek ..... "										
	276	438	*Government Gulch ..... "										
	277	439	*Sweeney ..... "										
	278	439	†*Sierra Nevada Jct ..... "										
	279	440	Kellogg ..... "										
	280	441	**Wardner** ..... "										
	281	448	***Osborne** ..... "										
	282	450	†*Lake Gulch ..... "										
	283	450	†***Sampling Works** ..... "										
	284	452	**Wallace** ..... "										
	285	459	**Mullan** ..... "										

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‡Less carload freight only will be received and delivered.

	Index Nos.	Miles from Portland	BETWEEN PORTLAND, †EAST PORTLAND, ALBINA, †ST. JOHNS, ORE., AND	CLASS RATES In cents per 100 lbs.									
				1	2	3	4	5	A	B	C	D	E
Burke Branch	286	456	§Gem ..... Ida.	148	133	95	82	67	65	55	46	36	26
	287	456	§Frisco ..... "										
	288	456	‡§Black Bear ..... "										
	289	457	†§Dorn ..... "										
	290	457	§Mace ..... "										
	291	459	Burke ..... "										
Main Line	292	379	Latah ..... Wash.	135	120	95	80	65	65	55	44	36	26
	293	388	Fairfield ..... "										
North Bank	294	393	Waverly ..... "										
MAIN LINE	295	391	†*Darknell ..... "	135	120	95	80	65	65	55	44	36	26
	296	394	Rockford ..... "										
	297	398	†*Buckley's ..... "										
	298	403	Freeman ..... "										
	299	406	*Mica ..... "										
	300	412	*Chester ..... "										
	301	418	†*East Spokane ..... "										
	302	421	Spokane ..... "										

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†Carload freight only will be received and delivered.
‡Less carload freight only will be received and delivered.
§No agent, but freight may be allowed to go forward without prepayment of charges. Agent at Wallace, Ida., will collect from consignees.

	Index Nos.	Miles from Portland.	BETWEEN PORTLAND, EAST PORTLAND, ALBINA, ST. JOHNS, ORE., AND	CARLOADS. Rates in cents per 100 lbs.					Rates in cents per ton. 2,000 lbs.	LIVE STOCK. In dollars per 30-foot car. See Rules 4 to 16, Page 28.	
				Grain, Flax Seed, Flour and Mill Feed, Straight or mixed carloads, For Minimum Weight, And Articles taking same rates See Rule 2, page 27. When for Export See Rule 3, page 27.	Potatoes or Onions. Straight or mixed carloads. Minimum weight 24,000 lbs.	Lumber, Shingles, Poles, Piling, Timbers, and the following articles manufactured therefrom: Bark, Hemlock; Blocks, Brake, Corner and Head; Box Shooks, Columns, Cross Arms, Eave Troughs, Fence Posts, Guttering, Ladder Material, Lath, Match Splints, Mouldings (Carpenters'), Pickets, Picture Backing, Pipe Material, Staves and Heading, Tank Material, Telegraph and Telephone Brackets, Ties, Tubing, Pump. Straight or mixed carloads. Minimum Weights, See Rule 17, page 28.	Salt. Minimum weight 40,000 lbs.	Hay or Straw Minimum weight See Rule 1, page 27.	Coal. Minimum weight 30 000 lbs.	Horses and Mules.	Cattle, Hogs, Sheep and Goats.
MAIN LINE	1	8	*Montavilla .....Ore	4	4	3	6	3	80	8.00	8.00
	2	9	*Quarry ..... "								
	3	10	*Clarnie ..... "								
	4	15	Fairview ..... "	5	5	4	7	4	100	10.00	10.00
	5	18	Troutdale ..... "	5	5	4	7½	4	100	12.00	12.00
	6	23	*Corbett ..... "	6	6	5	7½	5	100	12.00	12.00
	7	25	*Rooster Rock.... "	6	6	5	7½	5	100	12.00	12.00
	8	26	Latourelle..... "	7	7	5	7½	6	120	14.00	14.00
	9	29	Bridal Veil ..... "	7	7	5	7½	6	120	14.00	14.00
	10	33	*Oneonta ..... "	7½	7½	6	7½	7	130	16.00	16.00
	11	36	*Dodson's ..... "	7½	7½	7	7½	7	130	18.00	17.00
	12	38	*Warrendale ..... "	7½	7½	7	7½	7	130	18.00	17.00
	13	39	*Miller's ..... "								
	14	41	Bonneville ..... "	7½	7½	7	7½	7	130	18.00	18.00
	15	45	Cascade Locks. "								
	16	52	Wyeth..... "	7½	7½	8	7½	7½	130	22.00	21.00
	17	58	*Viento ..... "	7½	7½	9	7½	7½	130	22.00	22.00
	18	61	*Menominee..... "	7½	7½	9	7½	7½	130	24.00	24.00
	19	62	*Ruthton ..... "	7½	7½	9	7½	7½	130	24.00	24.00
	20	66	Hood River ..... "	7½	7½	10	7½	7½	130	24.00	24.00
	21	72	Mosier ..... "	7½	7½	10	7½	7½	130	26.00	26.00
	22	79	*Rowena..... "	7½	7½	10	7½	7½	130	26.00	26.00
	23	87	**The Dalles**..... "	7½	7½	10	7½	7½	150	28.00	28.00
	24	90	*Seuferts ..... "	8	8	11	8	8	150	28.00	28.00
	25	95	*Summit..... "	9	9	12	9	9	150	30.00	30.00
	26	99	*Tumwater ..... "	10	10	12	10	10	150	30.00	30.00
	27	99	*Celilo .... "	10¼	10¼	12	11	10½	150	30.00	30.00
	28	103	*Deschutes..... "	10¼	10¼	12	12	10½	150	32.00	32.00
	29	107	**Biggs**..... "	10¼	10¼	13	12½	10½	150	32.00	32.00
SHANIKO BRANCH	30	112	*Gibson .... "	12¾	12¾	13	16½	12¼	210	34.00	34.00
	31	114	*Sinks..... ..... "	14	14	13	17	13	230	34.00	34.00
	32	117	Wasco..... "	14	14	14	17	14	230	34.00	34.00
	33	121	*Klondyke..... "	15¼	15¼	14	19	14	250	36.00	36.00
	34	123	*Sandon ..... "	16¼	16¼	14	20	14	270	36.00	36.00
	35	128	*Hay Canyon .... "	16½	16½	14	20	14	270	36.00	36.00
	36	129	*McDonald..... "	16½	16½	14	21	14	270	36.00	36.00
	37	132	*DeMoss ..... "	16½	16½	15	21	15	270	37.00	37.00
	38	135	Moro ..... "	16½	16½	15	22	15	290	38.00	37.00
	39	138	*Erskinville..... "	17¼	17¼	15	23	15	310	38.00	38.00

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Shaniko Branch	40	146	Grass Valley .... Ore.	18	18	16	24	16	310	40.00	40.00
	41	153	*Bourbon ..... "	18	18	16	24	16	310	42.00	42.00
	42	160	*Kent ..... "	18	18	17	25	17	310	42.00	42.00
	43	165	*Wilcox ..... "	18	18	17	27	17	310	44.00	44.00
	44	177	**Shaniko** ..... "	18	18	18	30	18	310	46.00	46.00
MAIN LINE	45	110	Grants ..... "	10¼	10¼	13	12½	10¼	150	32.00	32.00
	46	112	*Rufus ..... "	10¼	10¼	13	16½	10¼	158	34.00	34.00
	47	117	*John Day's ..... "	10¼	10¼	14	18½	10¼	158	34.00	34.00
	48	122	*Squally Hook .... "	11	13½	14	21½	11	179	36.00	36.00
	49	126	*Quinton ..... "	12	13½	14	22½	12	179	36.00	36.00
	50	133	*Blalock's ..... "	12½	14	15	24½	12½	179	38.00	38.00
	51	141	**Arlington** ..... "	12½	14	15	26½	12½	190	40.00	38.00
CONDON BRANCH	52	143	*Eddy ..... "	15	15	16	30⅓	15	240	40.00	40.00
	53	149	*Shutler's ..... "	15	15	16	31⅓	15	240	40.00	40.00
	54	157	*Rock Creek ..... "	17	17	17	32⅓	17	275	42.00	42.00
	55	161	*Barnett ..... "	18	18	17	32½	17	300	44.00	44.00
	56	166	*Mikkalo ..... "	18	18	18	32½	18	300	44.00	44.00
	57	170	*Clem ..... "								
	58	174	*Speece ..... "								
	59	178	*Gwendolen ..... "	18	18	18	32½	18	310	46.00	46.00
	60	186	**Condon** ..... "	18	18	19	32½	18	310	48.00	48.00
Main Line	61	150	*Willows ..... "	14½	14	15	28⅓	14½	203	40.00	40.00
	62	151	**Heppner Jct** ..... "	14½	14	15	30⅓	14½	217	42.00	42.00
Heppner Branch	63	158	*Rhea ..... "	16	16	16	32⅔	15¾	297	42.00	42.00
	64	166	*Cecil's ..... "	16½	16½	16	34⅓	15¾	310	44.00	44.00
	65	171	*Morgan ..... "	17	17	17	35⅓	15¾	310	46.00	46.00
	66	180	Ione ..... "	17½	17½	18	36½	15¾	310	46.00	46.00
	67	182	*Jordan ..... "	18	18	19	37½	15¾	310	48.00	48.00
	68	188	*Lexington ..... "								
	69	197	**Heppner** ..... "	18	18	20	37½	15¾	310	50.00	50.00
MAIN LINE	70	161	*Castle Rock ..... "	15	14	15	32⅓	15	217	44.00	44.00
	71	170	*Coyote ..... "	15	14	15	34½	15	251	44.00	44.00
	72	171	*Fruit ..... "	15	14	15	36	15	251	46.00	46.00
	73	179	Irrigon ..... "	15	14	15	36½	15	251	46.00	46.00
	74	186	**Umatilla** ..... "	15	14	15	37½	15	251	48.00	48.00
	75	193	*Hermiston ..... "	15¾	14	15	37⅔	15¾	270	50.00	50.00
	76	201	*Foster's ..... "	15¾	14	15	37⅔	15¾	270	52.00	51.00
	77	205	Echo ..... "	15¾	14	15	37⅔	15¾	275	52.00	51.00
	78	211	*Nolin ..... "	15¾	14	15	37⅔	15¾	299	54.00	51.00

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	79	214	*Yoakum ..... Ore.	15¾	14	15	37½	15¾	299	54.00	51.00
	80	222	*Barnhart ..... "	15¾	14	15	37½	15¾	299	56.00	51.00
	81	230	**Pendleton** ..... "	15¾	14	15	37½	15¾	310	56.00	51.00
MAIN LINE	82	236	*Mission ..... "	15¾	15¾	18	40	15¾	324	56.00	51.50
	83	242	*Cayuse ..... "	15¾	15¾	19	40	15¾	324	56.00	51.50
	84	247	*Thorn Hollow.. "	15¾	15¾	19	40	15¾	375	57.00	52.00
	85	252	Bingham Springs ..... "	19¼	19¼	20	40	19¼	375	57.00	52.00
	86	263	*North Fork..... "	19¼	19¼	21	40	19¼	375	58.00	53.00
	87	270	*Allen's ..... "								
	88	272	*Huron ..... "	19¼	19¼	22	40	19¼	375	61.00	55.00
	89	275	*Porter ..... "								
	90	280	Meacham ..... "	19¼	19¼	23	40	19¼	375	61.00	55.00
	91	281	*Nibley..... "	19¼	19¼	23	40	19¼	383	62.00	56.00
	92	282	*Murdock's ..... "								
	93	286	Kamela ..... "	19¼	19¼	24	40	19¼	383	62.00	56.00
	94	288	*Spring..... "								
	95	293	*Glover ..... "								
	96	296	*Five Points..... "	19¼	19¼	24	40	19¼	399	62.00	56.00
	97	297	Hilgard ..... "								
	98	301	*Perry..... "	19¼	19¼	24	40	19¼	400	66.00	60.00
	99	305	**La Grande** ..... "	19¼	19¼	24	40	19¼	400	66.00	60.00
Elgin Branch	100	307	*Island City..... "								
	101	309	*Pierce's ..... "	19¼	19¼	26	40	19¼	400	68.00	62.00
	102	310	*Conley ..... "								
	103	313	*Alicel ..... "	19¼	19¼	27	40	19¼	400	68.00	62.00
	104	317	Imbler..... "	19¼	19¼	27	40	19¼	400	70.00	64.00
	105	320	*Rhinehart..... "	19¼	19¼	28	40	19¼	400	70.00	64.00
	106	325	**Elgin** ..... "	19¼	19¼	28	40	19¼	400	70.00	64.00
MAIN LINE	108	314	*Nodine ..... "	19¼	19¼	24	40	19¼	400	68.00	62.00
	109	317	**Union** ..... "	19¼	19¼	24	40	19¼	400	68.00	62.00
	110	327	*Telocasset..... "	20¼	20¼	24	40	20¼	400	70.00	64.00
	111	336	North Powder.... "	20¼	20¼	24	40	20¼	400	72.00	66.00
	112	341	*Hutchinson ..... "	20¼	20¼	24	40	20¼	400	74.00	68.00
	113	346	Haines ..... "	20¼	20¼	24	40	20¼	400	74.00	68.00
	114	356	**Baker City**..... "	20¼	20¼	24	40	20¼	400	76.00	70.00
	115	362	*Norton ..... "	22½	22½	25	40	22½	400	76.00	70.00
	116	366	*Encina ..... "								
	117	369	Pleasant Valley "	22½	22½	25	40	22½	400	77.00	70.00

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MAIN LINE	118	376	*Unity ..... Ore.								
	119	383	Durkee ..... "								
	120	388	*Nelson's ..... "								
	121	392	*Weatherby ..... "	22½	22½	25	40	22½	400	77.00	70.00
	122	399	*Lime ..... "								
	123	400	*Jennings ..... "								
	124	404	**Huntington** .... "								
PENDLETON BRANCH	125	235	*Saxe ..... "								
	126	238	*Havana ..... "								
	127	241	*Eastland ..... "	15¾	14	15	37½	15¾	332	56.00	51.50
	128	244	Adams ..... "								
	129	249	**Athena** ..... "								
	130	252	Weston ..... "								
	131	254	*Downing ..... "	15¾	14	15	37½	15¾	332	57.00	52.00
	132	258	*Blue Mountain.. "								
	133	261	*Bates ..... "	15¾	14	15	37½	15¾	332	58.00	53.00
	134	255	Milton ..... "	15¾	14	15	37½	15¾	332	58.00	53.00
	135	251	*Spofford ..... "	15¾	14	15	37½	15¾	332	60.00	60.00
MAIN LINE	136	197	*Cold Springs .... "	15	14	15	37½	15	287	50.00	50.00
	137	200	*Sand ..... "	15	14	15	37½	15	287	50.00	50.00
	138	206	*Juniper ..... "	15	14	15	37½	15	287	52.00	52.00
	139	213	**Wallula** ..... Wash.	15	14	15	37½	15	287	54.00	54.00
	140	223	*Humorist ..... "	15¾	15¾	15	40	15¾	300	56.00	56.00
	141	229	*Snake River.. ... "	15¾	15¾	15	40	15¾	310	56.00	56.00
	142	236	*Page ..... "	15¾	15¾	15	40	15¾	320	58.00	58.00
	143	244	*Simmons..... "	15¾	15¾	15	40	15¾	330	60.00	60.00
	144	247	*Walker's..... "	16¼	16¼	15	40	16¼	340	60.00	60.00
	145	253	*Scott ..... "	16¼	16¼	15	40	16¼	350	62.00	62.00
	146	261	*Moore ..... "	16¼	16¼	15	40	16¼	360	64.00	64.00
	147	269	*Ayer ..... "	16¼	16¼	15	40	16¼	375	64.00	64.00
	148	278	*Grange City.. ... "	16¼	16¼	15	40	16¼	385	65.00	65.00
	149	279	***GrangeCityJct** "	16¼	16¼	15	40	16¼	395	65.00	65.00
	150	223	*Divide ..... "	15¾	14	15	37½	15¾	307	56.00	56.00
	151	228	*Touchet..... "	15¾	14	15	37½	15¾	307	56.00	56.00
	152	232	*Lowden's ..... "	15¾	14	15	37½	15¾	321	58.00	58.00
	153	239	*Whitman ..... "	15¾	14	15	37½	15¾	321	58.00	58.00
	154	242	*Blalock ..... "	15¾	14	15	37½	15¾	329	60.00	60.00
	155	244	**Walla Walla** .. "	15¾	14	15	37½	15¾	329	60.00	60 00

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MAIN LINE	156	249	*Russell's ..... Wash.	15¾	14	15	40	15¾	355	60.00	60.00
	157	251	*Valley Grove .... "								
	158	254	*Hadley .. .. "								
	159	257	*Berryman ..... "	15¾	14	15	40	15¾	355	62.00	62.00
	160	259	*Ennis ..... "								
	161	264	Prescott ..... "	15¾	14	15	40	15¾	355	64.00	64.00
	162	269	*Bolles ..... "	16¼	14½	15	40	16¼	362	64.00	64.00
Dayton Branch	163	272	Waitsburg ..... "	16¼	14½	15	40	16¼	366	66.00	65.00
	164	275	*Huntsville .. ... "	16¼	14½	15	40	16¼	379	66.00	65.00
	165	279	*Longs ..... "	16¼	14½	15	40	16¼	379	66.00	65.00
	166	282	Dayton ..... "	16¼	14½	15	40	16¼	379	68.00	65.00
Turner Branch	167	292	*Whetstone ..... "	16¼	16¼	15	40	16¼	429	68.00	65.00
	168	294	*Turner ..... "								
Main Line	169	273	*Menoken ..... "	16¼	16¼	15	40	16¼	378	65.00	65.00
	170	281	*Alto ..... "	16¼	16¼	15	40	16¼	378	65.00	65.00
	171	286	*Relief ..... "	16¼	16¼	15	40	16¼	395	65.00	65.00
	172	283	Starbuck ..... "	16¼	16¼	15	40	16¼	395	65.00	65.00
Pomeroy Branch	173	291	*Delaney ..... "	19¼	19¼	15	40	19¼	400	70.00	65.00
	174	294	*Jackson ..... "								
	175	297	*Chard ..... "								
	176	307	*Zumwalt ..... "	19¼	19¼	15	40	19¼	400	72.00	65.00
	177	313	Pomeroy ..... "								
Main Line	178	283	Riparia ..... "	16¼	16¼	19	40	16¼	400	68.00	65.00
SNAKE RIVER ROUTE	179	291	*Malcolm's ..... "	19¼	17	20	40	19¼	400	80.00	70.00
	180	292	*Johnson's .. .. "								
	181	294	*New York Bar .. "								
	182	296	*Diamond Point .. "								
	183	299	*Central Ferry .. "								
	184	302	*Parrington's ..... "								
	185	303	*Miller's ..... "								
	186	308	*Penewawa ..... "								
	187	309	*Rice's ... . "								
	188	309	*Long Hollow .... "								
	189	311	*Cromwell's ..... "								
	190	315	*Indian Bar..... "								
	191	315	*Wade's .... "								
	192	317	*Ilia..... .... "								
	193	320	*Almota ..... "								
	194	322	*Davis..... ..... "								

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Snake River Route	195	326	*Offield's ..... Wash.	19½	17	20	40	19½	400	80.00	70.00
	196	326	*Kuhn's ..... "								
	197	327	*Wawawai ..... "								
	198	328	*Mayview ..... "								
	199	330	*Kennedy's ..... "								
	200	330	*Granite Point ... "								
	201	332	*Truax ..... "								
	202	332	*Smith's ..... "								
	203	334	*Bishop's ..... "								
	204	335	*Kelly's ..... "								
	205	336	*Blyton's ..... "								
	206	337	*Taylor's ..... "								
	207	339	*Judkins ..... "								
	208	340	*Squall John's .... "								
	209	344	*Steptoe ..... "								
	210	347	*Alpowai ..... "								
	211	350	*Evans ..... "								
	212	353	*Boom Boy ..... "								
	213	356	Lewiston .....Idaho								
Main Line	214	284	*Texas City .....Wash.	17	17	19	40	17	400	68.00	65.00
	215	289	*Canyon ..... "								
	216	297	*Hay ..... "	17	17	19	40	17	400	70.00	65.00
	217	302	*Meeker ..... "								
	218	308	La Crosse ..... "	17	17	19	40	17	400	72.00	65.00
Connell Branch	219	313	*Pampa ..... "	17	17	19	40	17	400	72.00	65.00
	220	321	*Hooper ..... "								
	221	332	Washtucna ..... "								
	222	337	*McAdams ..... "								
	223	346	Kahlotus ..... "								
	224	350	*Estes ..... "								
	225	354	*Sulphur ..... "								
	226	359	*Curry ..... "								
	227	361	Connell ..... "								
Main Line	228	319	Winona ..... "	19½	17	20	40	19½	400	72.00	65.00
Main Line	229	324	Endicott ..... "	19½	17	20	40	19½	400	72.00	65.00
	230	331	*Lee ..... "								
	231	335	*Diamonds ..... "								

* No agent. Freight must be prepaid.

	Index Nos.	Miles from Portland.	BETWEEN PORTLAND, EAST PORTLAND, ALBINA, ST. JOHNS, ORE., AND	CARLOADS. Rates in cents per 100 lbs.					Rates in cents per ton, 2,000 lbs.	LIVE STOCK. In dollars per 30-foot car. See Rules 4 to 16, Page 28.	
				Grain, Flax Seed, Flour and Mill Feed, Straight or mixed carloads. For Minimum Weight, And Articles taking same rates See Rule 2, page 27. When for Export See Rule 3, page 27.	Potatoes or Onions. Straight or mixed carloads. Minimum weight 24,000 lbs.	Lumber, Shingles, Poles, Piling, Timbers, and the following articles manufactured therefrom: Bark, Hemlock; Blocks, Boxe, Corner and Head; Box Shooks, Columns, Cross Arms, Eave Troughs, Fence Posts, Guttering, Ladder Material, Lath, Match Splints, Mouldings (Carpenters'), Pickets, Picture Backing, Pipe Material, Staves and Heading, Tank Material, Telegraph and Telephone Brackets, Ties, Tubing, Pump. Straight or mixed Carloads. Minimum Weights, See Rule 17, page 28.	Salt. Minimum weight 40,000 lbs.	Hay or Straw Minimum weight See Rule 1, page 27.	Coal. Minimum weight 30,000 lbs.	Horses and Mules.	Cattle, Hogs, Sheep and Goats.
Main Line	232	339	*Mockonema.....Wash.	19¼	17	20	40	19¼	400	72.00	65.00
	233	342	*Crest ..... "								
	234	344	**Colfax**..... "								
Moscow Branch	235	352	*Riverside..... "								
	236	354	*Shawnee ..... "								
	237	357	*Guy ..... "								
	238	360	*Armstrong ..... "	19¼	17	20	40	19¼	400	76.00	70.00
	239	363	**Pullman** ..... "								
	240	364	*Whitlow ..... "								
	241	365	*Holland..... "								
	242	368	*Garrison ..... "								
	243	372	**Moscow**.....Idaho	19¼	17	20	40	19¼	400	78.00	70.00
Main Line	244	350	*Glenwood.....Wash.								
	245	356	Elberton ..... "								
	246	362	**Garfield** ..... "	19¼	17	20	40	19¼	400	76.00	70.00
	247	365	*Walter's ..... "								
	248	371	**Farmington**.... "	19¼	17	20	40	19¼	400	78.00	70.00
Pleasant Valley Branch	249	330	*Willada..... "								
	250	337	St. John ..... "								
	251	344	*Sunset ..... "	19¼	17	20	40	19¼	400	72.00	65.00
	252	350	Thornton ..... "								
	253	352	*Coman ..... "								
	254	358	**Oakesdale** ..... "								
	255	361	*Fletcher ..... "	19¼	17	20	40	19¼	400	76.00	70.00
	256	364	*Warner ..... "								
Main Line	257	366	*Seltice..... "								
	258	372	**Tekoa**..... "	19¼	17	20	40	19¼	400	78.00	70.00
MULLAN BRANCH	259	375	*Tilma ..... "								
	260	379	*Lovell ....Idaho	19¼	17	25	40	19¼	400	78.00	78.00
	261	384	*Watts .... "								
	262	388	*Plummer..... "								
	263	395	*Chatcolet ..... "	19¼	17	25	40	19¼	400	80.00	80.00
	264	400	*Lacon .... "								
	265	402	**Harrison**..... "	19¼	17	25	40	19¼	400	82.00	80.00
	266	406	*Springston ..... "	22¼	17	25	40	21¼	400	82.00	80.00
	267	413	*Medimont ..... "								
	268	417	*Lane ..... "	24¾	19	25	40	23¼	400	82.00	80.00
	269	421	*Rose Lake ..... "	25¼	19	25	40	23¼	400	84 00	80.00

*No agent. Freight must be prepaid.

	Index Nos.	Miles from Portland.	BETWEEN PORTLAND, EAST PORTLAND, ALBINA, ST. JOHNS, ORE., AND	CARLOADS. Rates in cents per 100 lbs. Grain, Flax Seed, Flour and Mill Feed, Straight or mixed carloads. For Minimum Weight, And Articles taking same rates See Rule 2, page 27. When for Export See Rule 3, page 27.	Potatoes or Onions. Straight or mixed carloads. Minimum weight 24,000 lbs.	Lumber, Shingles, Poles, Piling, Timbers, and the following articles manufactured therefrom: Bark, Hemlock; Blocks, Base, Corner and Head; Box Shooks, Columns, Cross Arms, Eave Troughs, Fence Posts, Gutterips, Ladder Material, Lath, Match Splints, Mouldings (Carpenters'), Pickets, Picture Backing, Pipe Material, Staves and Heading, Tank Material, Telegraph and Telephone Brackets, Ties; Tubing, Pump. Straight or mixed Carloads. Minimum Weights, See Rule 11, page 3.	Salt. Minimum weight 40,000 lbs.	Hay or Straw Minimum weight See Rule 1, page 27.	Rates in cents per ton, 2,000 lbs. Coal. Minimum weight 30,000 lbs.	LIVE STOCK. In dollars per 30-foot car. See Rules 4 to 16, Page 28. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
MULLAN BRANCH	270	424	*Dudley ..... Idaho	25¼	19	25	40	23½	400	84.00	80.00
	271	429	*Cataldo ..... "	26¼	19	25	40	25¼	400	84.00	80.00
	272	433	*Kingston ..... "	27¼	19	25	40	25¼	400	84.00	80.00
	275	436	*Pine Creek ..... "								
	276	438	*Government Gulch ..... "								
	277	439	*Sweeney ..... "								
	278	439	*Sierra Nevada Jct. ..... "	28¼	19	25	40	26	400	84.00	80.00
	279	440	Kellogg ..... "								
	280	441	**Wardner** ..... "								
	281	448	***Osborne** ..... "								
	282	450	*Lake Gulch ..... "								
	283	450	***Sampling Works** "	28¾	19	25	40	26	400	86.00	80.00
	284	452	**Wallace** ..... "								
	285	459	**Mullan** ..... "								
MAIN LINE	286	456	¶**Gem** ..... "								
	287	456	¶**Frisco** ..... "								
	289	457	¶Dorn ..... "	28¾	19	25	40	26	400	86.00	80.00
	290	457	¶Mace ..... "								
	291	459	**Burke** ..... "								
	292	379	Latah ..... Wash.								
	293	388	Fairfield ..... "	19¼	17	20	40	19¼	400	78.00	70.00
Waverly Branch	294	393	**Waverly** ..... "								
MAIN LINE	295	391	*Darknell ..... "								
	296	394	Rockford ..... "								
	297	398	*Buckley's ..... "	19¼	17	20	40	19¼	400	80.00	70.00
	298	403	Freeman ..... "								
	299	406	*Mica ..... "								
	300	412	*Chester ..... "								
	301	418	*East Spokane ..... "								
	302	421	**Spokane** ..... "								

*No agent. Freight must be prepaid.

¶No agent but freight may be allowed to go forward without prepayment of charges. Agent at Wallace, Ida., will collect from consignee.

EXCEPTIONS TO CLASSIFICATION.

C. L. Minimum 30,000 lbs., unless otherwise provided.

Agricultural Implements (except hand), Windmills and articles classified as Vehicles in Western Classification, except Automobiles and Children's Vehicles, straight or mixed carloads, minimum weight 20,000 lbs.....Class A

Note—The rate on Agricultural Implements and Vehicles will apply "only" on articles classified as Class "A," under heading of Agricultural Implements and Vehicles in the Western Classification.

Agricultural Implements, not including Hand Implements (as enumerated in Western Classification), and parts thereof, including Agricultural Implement Castings, loose, or in bundles or boxes; Feed Mills, Farm Wagons, Bob Sleds, Wind Mills, K. D., and parts thereof; Engines, Horse Powers and Separators, less carloads.....3rd Class

Note 1.—Shipments of Engines, Horse Powers and Separators must be loaded and unloaded by shippers. All shipments at above rates are subject to provisions of Western Classification, including Rules and Conditions, and must be packed in such shape as required to obtain lowest rate provided therein unless otherwise specified above.

Note 2.—Rates named above will not apply on Barrel Water Carts, Wooden Tanks, square or round; Hose and Belting, rubber, cotton, canvas or leather; Pumps; Lamps; Headlights or printed matter, except as specifically provided by foot note on page 8 of Current Western Classification.

Minimum charge for shipments loaded on open cars will be based 5,000 lbs. at rates named. File 8625.

Bags, Grain, Burlap, Jute or Gunny, C. L. minimum weight 40,000 lbs.....5th Class

Bags, Grain, Burlap, Jute or Gunny, less carloads ..... 4th Class

File 9475.

CANNED GOODS, viz.:

Fish, Fruits (not preserved), Meats (including potted or deviled), Vegetables, Baked Macaroni-and-Cheese, Soups, Breads, Condensed Milk, Puddings, and Catsup, in hermetically sealed cans, boxed O. R. Weather.....5th Class

File 8626 and j-1043.

Coke ..... Class D

Emigrant Movables .....See Items 13 and 27, Pages 22 and 24

POWDER AND HIGH EXPLOSIVES:

Atlas, Hercules, Giant, Dittmar, Commercial, Aetna, Hecla, Vulcan, Forcible, and other nitro-glycerine powders and explosive articles:

12,000 lbs. or less.....D 1st Class

Over 12,000 lbs. and under 20,000 lbs. (with C. L. rate and minimum weight as maximum charge).....1½ 1st Class

Carloads, minimum weight 20,000 lbs..... 1st Class

Caps, less carloads.....D 1st Class

Carloads, minimum weight 20,000 lbs..... 1st Class

File 6315.

Shipments of Powder and High Explosives will only be accepted under the Rules and Regulations governing the Transportation of such articles as provided in Circular Gen. Frt. Dept. No. 566, General Supt's No. 32, I. C. C. No. 1141, and amendments thereto or subsequent issues thereof.

Household Goods .....See Items 13 and 27, Pages 22 and 24

Lime. .....Class D, Maximum 26c per 100 lbs.

Lime, Cement, Plaster and Stucco, straight or mixed carloads.....Class D

TORN PAGE

EXCEPTIONS TO CLASSIFICATION—Continued.

Oil, Fuel, in tank cars, subject to estimated weight 7.9 lbs. per gallon, carloads ..... 5th Class

PAPER, VIZ.:

Building N. O. S.; Roofing and Felt, (including Indented Paper and Roofing Paper Saturated with Composition and Graveled); Book, not surface coated, N. O. S.; Chemical Writing Manila; News; Poster; Tailors' Pattern; Wrapping, Hardware or Manila; Fruit, cut in shape (not printed); Tissue; Straw; Box Board and Manila Tag Board; carriers' liability limited to 5 cents per pound; carloads ..... 5th Class

NOTE 1—With carload shipments of Roofing Paper, there may be included Roofing Cement, Tin Roofing Caps and Nails, not to exceed 10 per cent of weight of the entire carload at the rate provided for Roofing Paper. File J-1026.

NOTE 2—Rate on paper in rolls is further conditioned on special release being signed by shippers relieving carriers from all liability for damage by chafing and wet.

Sash, Doors and Blinds of Cedar, Fir or Cyprus (Sash, if glazed, released), L. C. L. ....4th Class

Spring Wagons, taken apart, all parts (except wheels and gear) boxed or crated, wheels racked, L. C. L., actual weight ..... 1st Class

Vehicles, viz.: Spring Wagons, Buggies or Carriages, including Buck-boards and Road Carts, also parts thereof when shipped separately or with such Vehicles (except buggy tops when shipped separately), less carloads. .....1st Class

All shipments at above rates are subject to provisions of Western Classification, including Rules and Conditions, and must be packed in such shape as required to obtain lowest rate provided therein unless otherwise specified above.

File 803.

Wool, Hides, Pelts and Tallow.....See Special Tariff

Class Rates named herein governed by Western Classification will not apply.

On carload or less carload shipments of Crockery or Earthenware in packages with Cereal Breakfast Foods, the Crockery or Earthenware will be charged for at the less than carload rate on Crockery or Earthenware, on basis of the actual weight of the Crockery or Earthenware, and regular tariff rate will be charged on the Cereal Products. On carload shipments the established minimum weight at the carload rate must be observed on the Cereal Products.

File 2313.

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SPECIAL COMMODITY RATES.

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
			BETWEEN	AND		
1		Bark, tan	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	Walla Walla Wash	20	C. L. minimum weight 24,000 lbs.
			BETWEEN	AND		
2		Beer, Beer Tonic, Hop Tonic, Hop Tea Tonic, Weiss Beer and Liquid Bread, O. R. B. and L., freezing and fermenting, subject to estimated weights provided in Western Classification	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	Spokane ..... Wash. and all points named herein north of Pendleton, Ore., and Wallula, Wash., both inclusive	35	C. L. minimum weight 24,000 lbs.
			BETWEEN	AND		
3		Beer Packages, empty, returned subject to estimated weights, provided in Western Classification	All points named herein	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	27½	Carloads, minimum weights: In ref'g cars 12,000 lbs. In box cars 20,000 lbs.
4	8856	Boxes, Paper, boxed	Portland ..... Ore.	Spokane .... Wash. and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	148 222	Nested Not Nested } L. C. L.
5		Boxes, Berry, Fruit Baskets, tin bound, nested and Box or Crate Shooks	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	All points named herein	30	C. L. minimum weight 24,000 lbs.
			BETWEEN	AND		
6	5310 7311	Brick, Common, Pressed, Fire and Vitrified and Fire Clay	Portland ..... Ore.	Spokane ..... Wash. Connell ..... " Moscow ..... Ida. Lewiston ..... "	15	C. L. minimum weight 40,000 lbs.
7	8381	Broom Corn	Rice's Bar .. Wash.	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	62½	C. L. minimum weight 14,000 lbs.
8	8263	Cars, Empty Tank, returned	All rail stations east of East Portland, Ore.	Do.	Free	

SPECIAL COMMODITY RATES—Continued.

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
9	7805	Cement	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	All points named herein	25	C. L. minimum weight 50,000 lbs.
10	6784 8040	CEREALS, VIZ.: Graham, Rye or Whole Wheat Flour; Corn Flake, Corn Meal, Hominy, Grits, Oatmeal, Rolled Oats, Rolled Rye, Buckwheat Flour, Pancake Flour, Farina, Cerealine, Maizea, Germea, Cracked Wheat, Vitos, Shredded Biscuit, Pearl Barley, Farinose, Malta Vita, Grape Nuts, Refined Grits and Cereal Breakfast Foods N. O. S. in packages..... NOTE.—Postum Cereal will not be accepted at these rates; will take rate applying on Coffee and Coffee Substitutes.	BETWEEN Portland .....Ore †East Portland " Albina ..... " †St. John ..... "	AND All points named herein except points east of Baker City, Ore.	25 55	Straight or mixed carloads minimum weight 30,000 lbs. L. C. L.
			BETWEEN. ..... Do	AND Huntington .. Ore. and points east of Baker City, Ore.	30 82	Straight or mixed carloads minimum weight 30,000 lbs. L. C. L.
11	8985	Coke	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	Spokane ....Wash.	18	C. L. minimum weight 40,000 lbs., except when loaded to full visible capacity, minimum weight will be the actual weight but not less than 30,000 lbs.
12	4-1031	Earthenware and Stoneware.....	Spokane.... Wash.	Portland .....Ore. East Portland " Albina ..... " St. Johns ..... "	35	C. L. minimum weight 30,000 lbs.
13	7545	Emigrant Movables, as described in Western Classification..... See Rule 31, Page 31. **Carload Rating provided in Western Classification will not apply.**	Grants ..... Ore. and all points west thereof.....	Portland .....Ore.	1st Class but not less than 25c.	Any Quantity.
		FRUITS AND VEGETABLES:				
14		Fruits, tropical and citrus, including Oranges, Lemons, Bananas, Pineapples, Figs, Dates and Cocoanuts, but not including Cranberries, O. R. weather and decay, P. P. or guaranteed ... Oranges, when in standard size boxes (*i. e.*, outside measurement 12x12x26 inches; cubic space where Oranges are packed, 11¾x11¾x24 inches), will be estimated at 72 lbs. per box. Lemons, when in standard size boxes (*i. e.*, outside measurement 11x14½x27 inches), will be estimated at 84 lbs. per box. If boxes of irregular sizes are loaded, actual weight as ascertained at point of shipment will be charged on entire carload.	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	Spokane.....Wash. and all points north of Pendleton, Ore., and Walula, Wash., both inclusive	56	C. L. minimum weight 26,000 lbs.

†Carload freight only will be received and delivered.

SPECIAL COMMODITY RATES—Continued.

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
		FRUITS AND VEGETABLES—Continued.				
15		Fruits, fresh, including Small Berries and Vegetables (but not including tropical and citrus fruits or cranberries, etc., as specified in Item 14), O. R. weather and decay. P. P. or guaranteed.....	Portland ..... Ore. East Portland " Albina ..... " St. Johns ..... "	Spokane.....Wash. and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	56	C. L. minimum weight 20,000 lbs.
16		Fruit and Vegetables, fresh	Spokane.....Wash. Waverly ..... " Connell ..... " Moscow..... ....Ida. Lewiston..... "	Portland.....Ore. †East Portland " Albina ..... " †St. Johns .... "	40 60	C. L. minimum weight 20,000 lbs. L. C. L.
17		Fruit and Vegetables, fresh	Pomeroy .... Wash. Dayton..... " Waitsburg.. " WallaWalla " Athena.....Ore. Pendleton.. ... "	.... Do.	30 50	C. L. Minimum weight 20,000 lbs. L. C. L.
		FURNITURE, O. R. B. and chafing, or released, as follows:				
18		Bedsteads (Iron), Cribs (Iron), Institution Beds (Iron), K. D., Metallic Couch Frames, K. D., or Metallic Folding Couches (folded flat), plain or with Brass Trimmings, Metallic Mattresses and Spring Beds (compressed)	Portland.....Ore. East Portland " Albina ..... " St. Johns ..... "	Spokane.....Wash. and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	60	C. L. minimum weight 24,000 lbs.
19	10172	Beds Iron	..... Do.	..... Do.	50	C. L. minimum weight 24,000 lbs.
20		Bedsteads, Wooden, (including Wooden Folding Beds), Bureaus and Washstands (finished or unfinished), net cost of each piece enumerated not to exceed the following; and so receipted for, viz.: Bedsteads or Folding Beds, $12 each; Bureaus, $16 each; Washstands, $6 each	..... Do.	..... Do.	60	C. L. minimum weight 20,000 lbs.
21		Chairs, Cane-seated, Carpet-seated, Leather-board, Perforated Wood or Wooden-seated (not consisting wholly or partially of Mahogany, Rosewood, Ebony, Black Walnut or Cherry), not Reed, Willow or Rattan, not upholstered, finished or unfinished; Camp and Folding released, net cost not more than $9 per dozen; also Wood Seats for Chairs, perforated or unperforated, finished or unfinished	..... Do.	..... Do.	60	C. L. minimum weight 20,000 lbs.

† Carload freight only will be received and delivered.

SPECIAL COMMODITY RATES—Continued.

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
		FURNITURE, O. R. B. and chafing or released, as follows:—Continued.				
22		Furniture and Furniture Frames, new as described in Western Classification (except Bank, Store, Saloon and Office Furniture), straight or mixed Carloads	Portland....Ore. East Portland " Albina .. .... " St. Johns .... "	All points named herein	75	C. L. minimum weight 12,000 lbs.
23	8625	Furniture, when subject to one and one-half First Class rate, as per Western Classification current at time of shipment	Portland .. ...Ore.	Spokane ....Wash., and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	175	L. C. L.
24	8625	Furniture, when subject to First Class rate, as per Western Classification current at time of shipment	..... Do.	..... Do.	107	L. C. L.
25	8625	Furniture, when subject to Second Class rate or lower, as per Western Classification current at time of shipment	..... Do.	..... Do.	92	L. C. L
26		Grain, Flax Seed, Flour and Mill Feed, straight or mixed corloads, and articles taking same rates as provided in Rule 2, Page 27	Asotin.....Wash. Cowse Creek ..... " Tammany Creek.... " Trimble's Warehouse " Fir Bluff.....Idaho Big Eddy..... " Anchor Canyon .... " Arrow ..... " Jim Forts.. ..... " Snell's Mill ..... "	Portland..... Ore. East Portland " Albina ..... " St. Johns ..... "	19¼	Min. weight, see Rule 2, Page 27. Will apply only on shipments taken at Company's convenience.
27	7545	Household Goods or Emigrant Movables, as described in Western Classification..... See Rule 31, Page 31. Carload Rating provided in Western Classification will not apply.	Grants .....Ore. and all points West thereof	Portland ..... Ore.	1st Class but not less than 25 cts. per 100 lbs.	Any Quantity.
		IRON AND STEEL, Articles of, O. R. Wet and Rust:				
28		Bar and Slab (up to but not including 24 inches in width), Rod, Hoop or Band	Portland ..... Ore. East Portland " Albina ..... " St. Johns..... "	Spokane ....Wash., and all points named herein north of Pendleton, Ore., and Wallula, Wash., both inclusive	50	C. L. minimum weight 40,000 lbs.
29	7398	Pig Iron	..... Do.	..... Do.	$6.50 per ton of 2,240 lbs.	C. L. minimum weight 40,000 lbs.

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SPECIAL COMMODITY RATES—Continued.

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
		IRON AND STEEL, Articles of, O. R. Wet and Rust:—Continued.				
30	7579	Rails, Iron or Steel, and fastenings, viz., Splices, Railroad Spikes, Tie Plates, Track Bolts and Washers.....	Portland .....Ore East Portland " Albina..... " St. Johns..... "	Spokane ... Wash., and all points named herein north of Pendleton, Ore., and Wallula, Wash., both inclusive..	50	C. L. minimum weight 40,000 lbs.
31		Scrap Iron and Junk, including old empty Glass Bottles.....	BETWEEN All points named herein.....	AND Portland..... Ore. East Portland " Albina ..... " St. Johns ..... "	21¼	C. L. minimum weight 30,000 lbs.
32	8928	Oils, O. R. L., viz.; Castor, Cocoanut, Corn, Rubber, Rape Seed, Dead, Kalon, Lard, Linseed, Neatsfoot, Red, Resin or "Y," and Tallow, in cans, boxed, in barrels, or in bulk in tank cars, loaded to capacity	Portland ..... Ore. East Portland " Albina..... " St. Johns..... "	Spokane ....Wash., and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	65	C. L. minimum weight 24,000 lbs., except as otherwise noted.
33	8077	PAINTS, VIZ.: Paints, Earth or Mineral (including Colored Clay). Paints, Dry Zinc, White or Red Lead. Paints, Ground Zinc, in oil. Paints, White or Red Lead or Litharge, dry or in oil. Paints, White Lead, ground in oil. Paints, bulk. Paints, dry, chemical, Wood Filler Paint. Paint Stain, Paint Dryer. Putty, in cans, kegs, barrels or kits. Varnish. In cans, packed in crates, boxes or barrels, iron pails (wooden covers), tin kegs (flat tops), enclosed in veneer or sheet metal jackets, or in barrels, casks, kegs, kits, boxes or iron drums, O. R. L.	Do.	Do.	40	C. L. minimum weight 40,000 lbs.
		PAPER AND ARTICLES OF PAPER, in cases; if in crates, rolls, bales or bundles, O. R. C. and wet, released. Rate on Paper in rolls is further conditioned on special release being signed by shippers relieving carriers from all liability for damage by chafing and wet.				
34	8625 I-1126	Paper, Building, N. O. S., Roofing and Felt (including Indented Paper and Roofing Paper saturated with Composition and Graveled); Book, not surface-coated, N. O. S.; News; Poster; Tailors' Pattern; Wrapping, Hardware or Manila; Fruit cut in shape (not printed); Tissue; Straw; Box Board and Manila Tag Board; carriers' liability limited to 5 cents per lb.....	Portland .....Ore. East Portland " Albina..... " St. Johns..... "	Spokane ....Wash., and all points north of Pendleton, Ore. and Wallula, Wash., both inclusive	55	C. L. minimum weight 30,000 lbs. NOTE.—With carload shipments of Roofing Paper there may be included Roofing Cement, Tin Roofing Caps and Nails not to exceed 10% of weight of the entire carload, at the rate provided for Roofing Paper
35	4132	Paper, News.....	Do.	Spokane.....Wash.	35	C. L. minimum weight 30,000 lbs.

SPECIAL COMMODITY RATES—Continued.

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
36	5645	Poultry Food made from ground bones, grits, etc., in packages	Portland ... Ore. East Portland " Albina " St. Johns "	Spokane ... Wash., and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	30	C. L. minimum weight 30,000 lbs.
37		Sash, Doors and Blinds; Door, Window and Screen Frames; Door and Window Screens; Carpenters' Mouldings, in the white, for Door Frames and for inside finishing; Common Pine Porch Work, Posts and Spindles; straight or mixed carloads, or mixed with Lumber, Lath and Shingles; O. R. B. and C ... NOTE.—The above provision for Sash and Doors will not apply on Sash and Doors glased with other than common window glass or common window glass sand blast figured, or colored (not including frosted, leaded or plate glass.)	Do.	All points named herein	40	C. L. minimum weight 30,000 lbs.
38		Seed, Grain or Flax ...	BETWEEN Do.	AND Do.	½ Tariff Rate	
		Rate on Seed (Grain or Flax) applies only on shipments to be used for seeding in territory tributary to stations of the O. R. & N. Co. Shipments will be way-billed at full tariff rate, the reduction to ½ tariff rate will be made after seed is sown, upon application through agents of this Company, who will send receipted expense bills to the General Freight Office accompanied by affidavit of consignees that same has been used for seeding purposes.				
39	7866	Seed, Timothy ...	All points named herein	Portland ... Ore. East Portland " Albina " St. Johns "	35	C. L. minimum weight 30,000 lbs.
40	RD-784	Stone, including Granite, rough, quarried or chiseled (not lettered or polished)	BETWEEN Portland ... Ore. East Portland " Albina " St. Johns "	AND All points named herein	15	C. L. minimum weight 40,000 lbs.
41	10043	Stoneware, Common, of domestic manufacture ...	Portland ... Ore. East Portland " Albina " St. Johns "	Spokane ... Wash. and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive	35	C. L. minimum weight 30,000 lbs.
42	8856	Strawboard and Wood Pulp Cartons, straight or mixed carloads	... Do. ...	... Do. ...	65	C. L. minimum weight 30,000 lbs.
43		Terra Cotta, for building purposes	... Do. ...	... Do. ...	30	C. L. minimum weight 30,000 lbs.

SPECIAL RULES.

Governing Transportation of Grain, Hay, Lumber and Live Stock.

1. **Minimum Weight on HAY or Straw** will be as follows when loaded in—

Cars 30 feet and under in length..... 16,000 lbs.
Cars over 30 feet to and including 34 feet in length..... 17,000 lbs.
*Cars over 34 feet to but not including 36 feet in length ..... 20,000 lbs.
*Cars 36 feet or over in length..... 22,000 lbs.

*When loaded to full visible capacity, minimum will be actual weight, but not less than 18,000 lbs.

2. **Grain Rates and Minimum Weights.** Application of rates and minimum weight on Grain, Flour, Mill Feed, etc., will be as follows:

Section	COMMODITY	RATE AS
A	Wheat, Rye, Oats, Barley, Flax Seed, Buckwheat, Grain Screenings, Corn, (Common or Kaffir, Dried), not including Pop Corn; in straight or mixed carloads....	Grain, minimum weight marked capacity of car, except when cars are loaded to full visible or carrying capacity and contain less than the marked capacity, actual weight will govern, except that when cars of greater capacity than ordered are furnished at Company's convenience, actual weight, subject to minimum provided for car of the capacity ordered will govern, but in no case less than 30,000 lbs.
B	Malt, straight carloads.....	Grain, minimum wt. 24,000 lbs.
C	Flour, manufactured from Wheat, Corn, Buckwheat. Potatoes, and Rye; in straight or mixed carloads.....	Flour, minimum wt. 30,000 lbs.
D	Mill Feed, Bran, Bran Meal, Chopped Corn, Cracked Corn, Cracked Wheat, Crushed Wheat, Grits, Hominy Feed, Middlings, Oat Hulls, Shorts, Brewers' Grits, Brewers' Meal, Oil Cake, Oil Cake Meal, in straight or mixed carloads	Mill Feed, minimum wt. 30,000 lbs.

NOTE—Where Tariff provides a mixed carload rating on "Grain, Flour and Mill Feed," they, or all of the articles specified in sections A, C and D, may be loaded in the same car and charges to be assessed on basis of such rate and minimum weight governing. The term "Grain Rates" is intended to mean rates provided on "Grain" and will not be considered applicable to cases where rates are published on a specific kind of grain as for instance, Wheat, Oats, Barley, etc.

File 6091.

3. **Export Shipments.** The rate on Grain and Flour (including Wheat converted into Flour at Portland), which is transhipped at Portland by sailing vessels to European Ports will be thirty cents per ton of 2240 lbs. less than the rates named herein.

SPECIAL RULES—Continued.

4. **Live Stock.**—Rates named on Live Stock are subject to Rules and Conditions of Current Live Stock Contract, and apply only on cars not exceeding 30 feet in length, internal measurement.

5. **Charge for Longer Cars.**—Rates on cars exceeding 30 feet in length, internal measurement, will be the following per cents of the rate for cars 30 feet in length:

Over 30 feet to and including 32 feet							107	per cent
Over 32	"	"	"	33	"		110	"
Over 33	"	"	"	34	"		113	"
Over 34	"	"	"	36	"	6 inches	116	"
Over 36 feet 6 inches to and including 37 feet							119	"

For each additional foot, or fraction thereof, in length, an additional charge of 3 per cent. will be made.

6. **Live Stock Equipment.**—The Live Stock equipment in the Company's service consists largely of 34 and 36 ft. cars, and the carrier reserves the right to accept orders for cars of shorter lengths, and place same at its own convenience, when such equipment is available.

7. **Larger Cars Furnished.**—When cars of larger size than ordered by shipper are furnished at the Company's convenience, the rate charged shall be on the basis of length of car ordered and required to contain the load, but in no event, less than for cars of 34 ft., inside measurement.

8. **Greater Number of Cars Furnished.**—Where shipper orders two or more cars of certain length for loading live stock, the Railroad Company reserves the right to furnish, at its own convenience, a greater number of cars of shorter length, to equalize loading space called for, and to charge therefor on the basis applicable upon the number and size of cars originally called for or required to contain the shipment.

9. **Single-Deck in Place of Double-Deck Cars.**—Owing to the limited number of double-deck stock cars on the lines of The O. R. & N. Co., this Company reserves the right to furnish, at its own convenience, two single-deck stock cars in the place of each double-deck car ordered by shipper, and to charge therefor on the basis of double-deck cars so ordered.

10. **Basing Rates.**—Rates published for 30 ft. cars in this Tariff, or as it may be amended, are for basing purposes only, and the Company does not undertake to furnish such equipment.

11. **Double-Deck Cars.**—Rates named on Sheep or Goats will apply on single or double-deck cars. Cars must be decked by shippers, or at their expense, and without injury to cars, in case the proper equipment cannot be furnished promptly. No liability will be assumed by this Company for damage to Sheep or Goats in double-deck cars, caused by decks breaking down.

12. **Hogs in Single-Deck Cars.**—Rates named on Hogs will apply on shipments in single-deck cars only. Hogs in double-deck cars will not be accepted for transportation under this Tariff.

13. **Mixed Loading.**—Mixed carloads of Horses, Cattle, Hogs, Sheep or Goats, will be transported and charged at the carload rate on the stock taking highest rate in the car—shippers to put in partition at their own expense, separating the different kinds of stock, and to assume all risk of loss or injury caused by partition breaking down, or the mixing of stock while in transit.

14. **Stations Without Stock Yards.**—From stations where there are no stock yards or loading chutes, the rates shown herein will apply only where shippers furnish the necessary appliances for loading stock, which must be done at their own expense and risk.

15. **Care of Stock.**—The owners of Live Stock must care for shipments while in transit at their own expense and risk, and the expense of caring, feeding and watering, must be paid on delivery at destination by owner or consignee in addition to the rate named herein.

16. **Confinement of Stock.**—Live Stock carried over this Company's lines will be subject to law pertaining to confinement of live stock, commonly known as the "28-hour law," as covered by O. R. & N. Circular No. 558, I. C. C. No. 1114, amendments thereto or subsequent issues thereof.

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17. Rates named on **Lumber, Lath, Shingles,** etc., will be subject to the following minimum weights:

ON	MINIMUM (See Notes A and B below)	EXCEPTION * (See * below)
Shingles, in straight carloads, or mixed carloads of Shingles and Lumber (all kinds, except Hardwood Lumber and Woods of Value), and articles taking the same or lower than Shingle rates	Refrigerator cars, all lengths, 20,000 lbs.	
	Other cars, 36 feet 6 inches or less in length, 30,000 lbs.	When loaded to full visible capacity minimum will be actual weight, but not less than 20,000 lbs.
	Other cars, over 36 feet 6 inches in length, 34,000 lbs.	
Lumber and articles taking Lumber rates (except Fence Posts, straight carloads)	In box, stock or refrigerator cars, under 36 feet in length, 30,000 lbs.	When loaded to full visible capacity with **Cedar** or **Pine** Lumber, Poles, Piling or Timbers and articles manufactured therefrom, minimum will be actual weight, but not less than 24,000 lbs.
	In box, stock or refrigerator cars, 36 feet or over in length, 40,000 lbs.	When loaded to full visible capacity with **Cedar** Lumber, Poles, Piling or Timbers and articles manufactured therefrom, minimum will be actual weight, but not less than 24,000 lbs.
		When loaded to full visible capacity with **Pine** Lumber, Poles, Piling or Timbers and articles manufactured therefrom, minimum will be actual weight, but not less than 30,000 lbs.
Fence Posts, straight carloads	In box, stock or refrigerator cars, under 36 feet in length, 24,000 lbs.	
	In box, stock or refrigerator cars, 36 feet or over in length, 30,000 lbs.	When loaded to full visible capacity minimum will be actual weight, but not less than 24,000 lbs.
Lumber, Poles, Piling and articles taking same rates, in single car lengths	On open cars, under 36 feet in length, 30,000 lbs.	
	On open cars, 36 feet or over in length, 40,000 lbs.	When loaded with **Poles** or **Piling** less than 30 feet in length, minimum will be actual weight, but not less than 30,000 lbs.
Lumber, Timbers, Poles and Piling which, on account of length, requires two or more cars	30,000 lbs. for each car used	

*The term "loaded to full visible capacity" means that the entire space in the car shall be utilized to the fullest extent and that no more Lumber (or other material) in ordinary lengths could be loaded therein. In cases where the actual weight of shipment is less than the prescribed minimum, Billing Agent must examine the car to determine whether loaded to its full visible capacity. If entire space has been utilized, notation to that effect must be placed upon the way-bill. Many shipments are loaded at stations having no agent, and many shipping points are not equipped with track scales; therefore, delivering agent should carefully inspect shipments to verify Billing Agent's notation, or in the absence of notation, to determine proper weight to apply.

NOTE A—Measurements marked on cars will prevail, regardless of inside measurement being a little short or over; when measurements are not shown, the actual measurement will govern.

NOTE B—When marked capacity of car is less than minimum carload weight above provided, the marked capacity will in all cases apply as the minimum.

Dunnage Allowance for Stakes and Supports With Lumber and Other Forest Products Loaded on Open Cars.

An allowance of 500 lbs. per car will be made for weight of Standard Strips and Stakes or Supports used on carload shipments of Forest Products loaded on flat or gondola cars, but in no case must less than the minimum C. L. weight specified above be charged for each car.

In way-billing Forest Products under this rule, agent will show the actual weight, also the deduction herein authorized extending freight charges on basis of remainder, subject to the minimum carload weight specified in Tariff.

When two or more cars are used for extra length Forest Products, the allowance of 500 lbs. for weight of Standard Strips and Stakes or Supports will be deducted for each car used, subject to the minimum carload weight specified in Tariff.

WEIGHING.

In addition to the track scale weights taken at the shipping point, or at an intermediate weighing station, all shipments **must be re-weighed** at destination or at some point en route.

No correction in the initial scale weight will be made unless the re-weighing shows a difference of 500 lbs. or more.

The above does not effect application of minimum weights specified in this tariff, which must in all cases be observed.

GENERAL RULES AND CONDITIONS.

18. **Minimum Charge.**—The minimum charge for any single shipment will be the charge for 100 lbs. at the rate to which commodity belongs. In case shipment is composed of more than one class of freight, the minimum charge will be the charge for 100 lbs. of the article taking the highest rate.

Exception: In no case will minimum charge be less than 25 cents, nor more than the charge for 100 lbs. at second-class rate, unless actual weight at actual rate makes more.

19. **Use of Class Rates.**—Where the use of Class Rates governed by Western Classification make lower rates than are otherwise provided herein, such lower rates will govern.

20. **Small Consignments** from different consignors to one consignee, shipped at same time and place at the less carload rate, will be treated as a single consignment.

21. **Mixed Carloads.**—Where two or more commodities are included in one item, they may be shipped in straight or mixed carloads at the rate provided, unless otherwise specified.

22. **Weights on Perishable Freight.**—On shipments of Vegetables and Green Fruit, subject to decrease in weight by evaporation, agents at destination will collect charges on basis of weight ascertained at point of shipment.

23. **Carload Freight.**—All carload freight must be loaded and unloaded by shipper or consignee, and will be subject to the rules and regulations of the Pacific Northwest Car Service Association, O. R. & N. Co. No. L-494, P. N. C. S. A. I. C. C. No. 1, amendments thereto or subsequent issues thereof.

24. **Shipper's Count.**—When freight is loaded by shipper and at "shipper's count," the carriers will not be responsible, directly or indirectly, for damage resulting from improper stowage or insufficient packing or for any discrepancy in count.

25. **Demurrage.**—Under this Tariff when freight is to be loaded by consignor or unloaded by the consignee, car service charges for delay in loading or unloading, will be assessed in accordance with rates, rules and regulations of the Pacific Northwest Car Service Association, O. R. & N. No. L-494, P. N. C. S. A., I. C. C. No. 1, amendments thereto or subsequent issues thereof, and such charges will be added to the rates named herein and constitute a part of the total charges to be collected by the carrier on the property.

26. **Storage.**—All shipments of freight in less than carload quantities, remaining in warehouses of this Company awaiting delivery to consignees, will be charged for storage after ten days from date of arrival as per O. R. & N. Co. Tariff, No. L-501, Sec. No. 1095, amendments thereto or subsequent issues thereof.

27. **Diversions.**—"This Company will permit diversion of freight, either in transit or after arrival at original destination or subsequent destination, (if no part of shipment has been removed from car or possession of carrier), at the through published rate, plus car service, storage and other charges, if any, at original or subsequent destination, provided final destination is in the same general direction as the point to which freight was originally consigned."

28. **Time Tables and Schedules** for the movement of trains may be varied by the Company at its pleasure or convenience. It does not undertake to carry goods or live stock to arrive at any market point on any particular market day or market hour; nor are its time cards and time tables to be regarded as an undertaking by the Company to deliver at the hours or times therein specified.

29. **River Transfer.**—Carload shipments received from water carriers at Ainsworth, Alaska or O. R. & N. docks at Portland or Albina, when not covered by joint tariffs, will be subject to an additional charge of 25 cents per ton of 2000 lbs. to cover the cost of loading into cars, when the same is performed by this Company. No charge will be made for unloading carload freight at Ainsworth, Alaska or O. R. & N. docks at Portland or Albina when for delivery to water carriers.

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GENERAL RULES AND CONDITIONS—Continued.

30. **Returned Shipments.**—Unless lower rates are otherwise provided, one-half tariff rates current at time of reshipment, will apply on shipment of goods returned on account of being defective, unsalable or refused by consignees, subject to the following rules and conditions:

a. No shipment will be returned until all charges have been paid or fully guaranteed.

b. Agents will make proper notation on waybills covering shipments made under these rules and will assure themselves that same are complied with.

c. The established minimum charge as provided herein to prevail in all cases, no reduction to be made therefrom.

Shipments loaded on open cars will be subject to minimum charge of 5,000 lbs. at first class rate as per rule 17 of Current Western Classification.

31. **Rates on Household Goods or Emigrant Movables** will apply on shipments not for sale or speculation, including Personal Effects, Second-Hand Furniture, Stoves and such articles taking same rates as provided in Western Classification, carriers' liability to be limited to $5.00 per 100 lbs. in case of loss or damage and so receipted for, charges to be prepaid or guaranteed.

All shipments must be packed in accordance with Western Classification in order to entitle them to these rates.

32. **Liquors Destined to Points Within Boundaries of Indian Reservations.**—Agents will refuse shipments of Ardent Spirits, Wines or Liquors, destined points within the boundaries of the Umatilla and Coeur d'Alene Indian Reservations, viz.:

Umatilla Indian Reservation: Mission to Bingham Springs, Ore., Index Nos. 82 to 85 inclusive.
Coeur d'Alene Indian Reservation: Tilma, Wash., to Lacon, Idaho, Index Nos. 259 to 264

APPLICATION OF RATES.

33. All Class and Commodity Rates named herein applying between Portland, Ore., and Spokane, Wash., will be the Maximum Rates to be applied in the same direction between Portland, Ore., and all points north of Pendleton, Ore., and Wallula, Wash., both inclusive (except points east of Tekoa, Wash.)

34. Rates named herein will not apply to or from points on Goverment Gulch Branch, between Sweeney, Ida., and terminus of Branch.

35. Rates named herein between Portland and points north of Seltice and east of Tekoa, Wash., will apply alike via Winona or Colfax. (See Rules 36, 37, 38 and 39.)

36. Rates named on Coal and Live Stock to and from Spofford, Blue Mountain and intermediate points, apply via Pendleton only.

37. Freight (except Coal and Live Stock to and from all points north of Blue Mountain, to Spofford inclusive) will be routed via Wallula and Walla Walla.

38. Freight to and from all points south of Downing, to Saxe inclusive, will be routed via Pendleton.

39. Freight to and from Seltice and all points north and east of Tekoa, will be routed via Winona and Oakesdale, Wash., on the Pleasant Valley Branch.

40. When special trips are made by this Company's Snake River boats to Asotin, Wash., for Grain shipments, merchandise coming from or destined to Asotin, Wash., will take same rates as apply to or from Lewiston, Idaho. Will apply only on shipments taken at Company's convenience.

41. The following intermediate Commodity Rates, on pages 39 to 51, inclusive, of Transcontinental Freight Bureau Eastbound Tariff, No. 3 E (T. C. F. B. I. C. C. No. 318), amendments thereto, or subsequent issues thereof, applying to Missouri River common points, will be the maximum rates to be applied from Portland to all stations on this Company's lines east of Portland.

Blankets
Bottles, empty, returned
Cascara Sagrada
Chocolate
Clothing, N. O. S.
Dye Stuffs
Dye Woods, in Sticks
Dye Woods, N. O. S.
Dye Woods, Fustic, etc.
Extracts, Tanning
Fish, dry, smoked or salted, C. L.
Fish, fresh, (freight train service)
Fish, pickled and caviar
Fruit, dried, Pacific Coast Products, L. C. L. and C. L. (4 items)
Fruits, crystalized
Fuse, in packages, C. L. only
Honey
Hops
Leather, in boxes or rolls
Malt
Medicinal Herbs, etc. (2 items)
Nuts, edible
Oil, Olive
Peas
Potatoes
Quicksilver
Rice
Seed, Alfalfa, Clover, etc.
Tea and Tea Dust (C. L. only)
Teasels
Vegetables (freight train service)

ISSUED SEMI-ANNUALLY

ONLY TWO SUPPLEMENTS TO THIS CLASSIFICATION CAN BE IN FORCE AT ANY TIME

I. C. C. No. 2
(Cancels I. C. C. No. 1 and Supplements)

Exhibit M

THE WESTERN CLASSIFICATION

No. 44

(CANCELS THE WESTERN CLASSIFICATION No. 43 AND SUPPLEMENTS)

Applying on Freight Traffic covered by Tariffs issued subject thereto

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Issued March 15, 1908. Effective May 1, 1908

U. S. District Court
Filed
May 11, 1908
Geo. Loder, Clerk
District of Oregon

Issued and Filed with the Interstate Commerce Commission by F. O. Becker as Agent for the Individual Carriers, shown herein

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The Western Classification Committee

GREAT NORTHERN BUILDING
CHICAGO

F. O. BECKER, Chairman

This Classification is filed by me with the Interstate Commerce Commission, as agent for the following lines

Abbotsford & Northeastern R. R.	FX1–No. 2
Acme Red River & Northern R'y	FX1–No. 0
Alabama Great Southern R. R.	FX1–No. 2
Albany & Northern R'y	FX1–No. 9
Albia & Ceterville R'y	FX1–No. 1
Apalachicola Northern R. R.	FXI–No. 5
Arizona & Colorado R. R.	FX1–No. 2
Arizona & New Mexico R'y. / Lordsburg & Hachita R. R.	FX1–No. 1
Arkansas Midland R. R.	FX1–No. 1
Arkansas Central R. R.	FX1–No.A-1
Arkansas, Oklahoma & Western R. R.	FX1–No. 2
Arkansas Western R'y	FX1–No. 2
Astoria & Columbia River R. R.	FX1–No. 4
Atchison, Topeka & Santa Fe R'y	FX1–No. 3
Atlanta & West Point R. R.	FX1–No. 3
Atlanta, Birmingham & Atlantic R. R.	FX1–No. 3
Atlantic Coast Line R. R.	FX1–No. 3
Atlantic Northern & Southern R'y	FX1–No. 0
Aurora & DeKalb Line	FX1–No. 16
Baltimore, Chesapeake & Atlantic R'y	FX1–No. 4
Barnwell & Searchlight R'y	FX1–No. 3
Barry Brothers Transportation Co	FX1–No. 95
Bay of Quinte R'y	FX1–No. 3
Beaumont and Great Northern R. R.	FX1–No. 12
Beaumont, Sour Lake & Western R'y	FX1–No. 7
Bellingham Bay & British Columbia R. R.	FX1–No. 3
Big Fork & International Falls R'y	FX1–No. 1
Bostwick Railroad	FX1 No. 0
Boyne City, Gaylord & Alpena R. R.	FX1–No. 8
Brimstone Railroad & Canal Co	FX1–No. 1
Brinkley, Helena & Indian Bay R. R.	FX1–No. 1
Brinson Railway	FX1–No. 2
Buffalo & Susquehanna R'y	FX1–No. 5
Buffalo, Attica & Arcade R.R.	FX1–No. 4
Burr's Ferry, Browndel & Chester R'y	FX1–No. 2
Butler County R. R.	FX1–No. 2
Butte, Anaconda and Pacific R'y	FX1–No. 5
Caldwell & Northern R. R.	FX1–No. 5
Canadian Northern Ontario R'y	FX1–No. 32
Canadian Northern Quebec R'y.	FX1–No. 3

Canadian Northern R'y	FX1–No. 25
Canadian Pacific R'y	FX1–No. 12
Carolina & North-Western R'y	FX1–No. 5
Caro Northern R'y	FX1–No. 91
Central of Georgia R'y	FX1–No. 3
Central Ontario R'y	FX1–No. 93
Central R. R. Company of Pennsylyania	FX1–No. 2
Central Vermont R'y	FX1–No. 5
Charleston & Western Carolina R'y	FX1–No. 4
Charlotte Harbor & Northern R'y	FX1–No. 2
Chattahoochee Valley R'y	FX1–No. 2
Chesapeake and Ohio R'y	FX1–No. 12
Chicago & Alton R. R	FX1–No. 3
Chicago & Eastern Illinois R. R	FX1–No. 4
Chicago & Illinois Midland R'y	FX1–No. 2
Chicago & Illinois Western R. R	FX1–No. 2
Chicago & North-Western R'y	FX1–No. 3
Chicago & Wabash Valley R'y	FX1–No. 3
Chicago, Burlington & Quincy R. R	FX1–No. 1
Chicago, Great Western R'y	FX1–No. 2
Chicago, Indiana & Southern R.R	FX1–No. 17
Chicago, Milwaukee & St. Paul R'y	FX1–No. 2
Chicago, Milwaukee & St. Paul R'y Company of Montana	FX1–No. 1
Chicago, Milwaukee & St. Paul R'y Company of South Dakota	FX1–No. 2
Chicago, Rock Island & Gulf R'y	FX1–No. 3
Chicago, Rock Island & El Paso R'y	FX1–No. 3
Chicago, Rock Island & Pacific R'y	FX1–No. 2
Chicago, St. Paul, Minneapolis & Omaha R'y	FX1–No. 2
Chicago, West Pullman & Southern R'y	FX1–No. 6
Cincinnati, New Orleans & Texas Pacific R'y	FX1–No. 5
Coal & Coke R'y	FX1–No. 12
Coeur D'Alene & Spokane R'y	FX1–No. 1
Colorado & Northwestern R. R	FX1–No. 1
Colorado & South-Eastern R'y	FX1–No. 10
Colorado & Southern R'y	FX1–No. 2
Colorado & Wyoming R'y	FX1–No. 3
Colorado Midland R'y	FX1–No. 5
Colorado Southern, New Orleans & Pacific R. R	FX1–No. 7
Colorado Springs & Cripple Creek District R'y	FX1–No. 1
Columbia & Puget Sound R. R	FX1–No. 1
Columbia, Newberry & Laurens R. R	FX1–No. 3
Copper Range R. R	FX1–No. 1
Cornwall & Lebanon R. R	FX1–No. 3
Coudersport & Port Allegany R. R	FX1–No. 4
Crystal River R. R	FX1–No. 1
Cumberland Valley R. R	FX1–No. 3
Dansville & Mt. Morris R. R	FX1–No. 3

Dawson Railway	FX1–No. 5
Dayton, Lebanon & Cincinnati R. R. and Terminal Co	FX1–No. 2
Denison & Pacific Suburban R'y	FX1–No. 2
Denver & Rio Grande R. R	FX1–No. 1
Denver, Northwestern & Pacific R'y	FX1–No. 2
Delaware & Hudson Co	FX1–No. 7
DeQueen & Eastern R. R	FX1–No. 0
Des Moines, Iowa Falls & Northern R'y	FX1–No. 1
Dover & South Bound R. R	FX1–No. 3
Duluth & Iron Range R. R	FX1–No. 1
Duluth & Northeastern R. R	FX1–No. 1
Duluth, Missabe & Northern R'y	FX1–No. 2
Duluth, Rainy Lake & Winnipeg R'y	FX1–No. 1
Duluth, South Shore & Atlantic R'y	FX1–No. 5
Dunbar & Wausaukee R'y	FX1–No. 0
Durham & Southern R'y	FX1–No. 8
Eastern Railway Company of New Mexico	FX1–No. 3
East Tennessee & Western North Carolina R. R	FX1–No. 3
El Dorado & Bastrop R'y	FX1–No. 1
El Paso & Northeastern R. R	FX1–No. 5
El Paso & Northeastern R'y	FX1–No. 5
El Paso & Rock Island R'y	FX1–No. 5
El Paso & Southwestern R. R	FX1–No. 5
El Paso & Southwestern R. R. of Texas	FX1–No. 5
Evansville & Terre Haute R. R. Evansville & Indianapolis R. R.	FX1–No. 9
Fairchild & North-Eastern R'y	FX1–No. 2
Farmers Grain & Shipping Co	FX1–No. 1
Farmerville & Southern R. R	FX1–No. 1
Fernwood & Gulf R. R	FX1–No. 2
Fitzgerald, Ocilla & Broxton R. R	FX1–No. 6
Flint River & Northeastern R. R	FX1–No. 1
Florence & Cripple Creek R. R	FX1–No. 1
Fonda, Johnstown & Gloversville R. R	FX1–No. 4
Fort Dodge, Des Moines & Southern R. R. Newton & Northwestern R. R	FX1–No. 2
Fort Smith & Western R'y	FX1–No. 6
Fort Worth and Denver City R'y	FX1–No. 14
Fort Worth & Rio Grande R'y	FX1–No. 2
Frankfort & Cincinnati R'y	FX1–No. 5
Gainesville Midland R'y	FX1–No. 9
Galveston, Harrisburg & San Antonio R'y	FX1–No. 2
Galveston, Houston and Henderson R. R	FX1–No. 54
Georgia & Florida R'y	FX1–No. 4
Georgia Coast & Piedmont R. R	FX1–No. 179
Georgia, Florida & Alabama R'y	FX1–No. 3
Georgia Northern R'y	FX1–No. 1
Georgia Southern & Florida R'y	FX1–No. 6

Gila Valley, Globe & Northern R'y	FX1–No. 2
Goodrich Transit Co	FX1–No. 1
Grand Canyon R'y	FX1–No. 3
Great Northern R'y Lines	FX1–No. 4
Great Southern R. R	FX1–No. 0
Great Western R'y	FX1–No. 4
Green Bay & Western R. R. Kewaunee, Green Bay & Western R. R. Ahnapee & Western R'y Iola & Northern R. R.	FX1–No. 1
Greenville & Knoxville R'y	FX1–No. 0
Gulf & Ship Island R. R	FX1–No. 4
Gulf, Colorado & Santa Fe R'y	FX1–No. 3
Gulf Line R'y	FX1–No. 13
Halifax & South Western R'y	FX1–No. 2
Harriman & Northeastern R. R	FX1–No. 2
Hazelhurst & South-Eastern R'y	FX1–No. 2
Hearne & Brazos Valley R. R	FX1–No. 4
Houston & Brazos Valley R'y	FX1–No. 33
Houston & Shreveport R. R	FX1–No. 3
Houston & Texas Central R. R	FX1–No. 2
Houston East & West Texas R'y	FX1–No. 2
Huntingdon & Broad Top Mountain R. R. & Coal Company	FX1–No. 4
Iberia & Vermilion R. R	FX1–No. 3
Idaho & Washington Northern R. R	FX1–No. 2
Illinois Central R'y	FX1–No. 1
Illinois, Iowa & Minnesota R'y	FX1–No. 2
Illinois Northern R'y	FX1–No. 7
Illinois Southern R'y	FX1–No. 6
Indianapolis Southern R. R	FX1–No. 30
Intercolonial R'y of Canada	FX1–No. 4
International & Great Northern R. R	FX1–No. 4
Interstate Car Transfer Co	FX1–No. 3
Inter-Urban R'y	FX1–No. 1
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Las Vegas & Tonopah R. R	FX1–No. 1
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Victoria & Sidney R'y FX1–No. 1
Virginia & Southwestern R'y FX1–No. 2
Virginian R'y FX1–No. 3

Wabash, Chester & Western R. R. FX1–No. 89
Wabash R. R. FX1–No. 34

Waterloo, Cedar Falls & Northern R'y	FX1–No. 2
Wadley Southern R'y	FX1–No. 2
Washington County R'y	FX1–No. 3
Weatherford, Mineral Wells & Northwestern R'y	FX1–No. 6
Western R'y. of Alabama	FX1–No. 3
Wheeling & Lake Erie R. R. Wabash-Pittsburg Terminal R'y. West Side Belt R. R.	FX1–No. 36
Wichita Valley R'y	FX1–No. 15
Wiggins Ferry Co	FX1–No. 3
Williamsport & North Branch R. R	FX1–No. 2
Wisconsin & Michigan R'y	FX1–No. 4
Wisconsin & Northern R. R	FX1–No. 2
Wisconsin Central R'y	FX1–No. 2
Woodworth & Louisiana Central R'y	FX1–No. 10
Wrightsville & Tennille R. R	FX1–No. 4
Yazoo & Mississippi Valley R. R	FX1–No. 27
Zwolle & Eastern R'y	FX1–No. 2

F. O. BECKER, Agent.

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" " Long	65	3
" "	65	4
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" Cut Glass	57	19
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" Coffin, Plated	22	39
" Furniture, Metal N. O. S.	54	65
" for Roofing Material	109	51
" Hide	105	26
" House, N. O. S.	80	20
" House, Polished or Varnished	80	21
" House, Composition	112	33
" Iron Trunk	137	33
" Leather	74	57
" Pork	106	20
" Refrigerator	119	54
" Stove	129	51
" Tinners'	134	26
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" " " Pig	69	58
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" " Steel	136	64
" Eave, Galv. Iron	109	46
" Eave, Iron	109	51
" Feed	44	35
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" Spray (Iron)	64	17
" Watering, (Galvanized Iron)	71	50
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" Watering, Wooden	82	30
" Watering, Galv. Iron and Wood Combined	71	51
" Watering, Galv. Steel	71	52
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" Agl. Impl	12	50
" and Drainers, Revolving, Bottle	83	30
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" " Electric Motor	41	3
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" Hand Express	136	74
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" " " Toy	145	45
" " " Boys'	145	46
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" Leatheroid (Hand)	136	76
" Logging	141	30
" Lumber Kiln	72	61
" Packers' Tank	136	80
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" Rocking Chair	54	46
" Saw Mill, Carriage	136	79
" Soap Frame	137	6
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" Warehouse	137	1
" " Iron Parts	71	29
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" C. L.	137	31
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" Boiler with Mining Machinery	89	27
" Collapsible	137	35
" Insulating, Paper	42	21
" Iron Boiler	111	37
" Lead, Collapsible	74	24
" Paper	109	23
" Speaking, Tin	112	2
" Steel, N. O. S.	112	3
" Test, Glass	57	12
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" " Boiler, Braces, etc.	66	58
" " Iron Arts	65	2
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" " Wooden	115	32
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" Seamless, Iron	66	7
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" " Iron or Steel	113	1
" " Steel (Copper lined)	113	2
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" " Nested with Wooden Ware and Wood Fibre Ware	149	49
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" " Soapstone	113	33
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Rulings Shown in Supplement No. 7, dated January 2, 1908, have been incorporated in Classification No. 44, and in addition thereto, changes have been made in the following Rules and Articles.

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105	45	Lard Substitutes.
107	28	Black Asphaltum Paints and Varnishes.
107	42	Varnish and Paint Dryers.
108	9	Wall Paper in the white.
110	42	Tar.
111	46	Sewer Pipe.
	47	
111	37	Pipe.
113	1	Bath Tubs.
115	19	Power Pumps.
116	43	Mining Cars.
121	58	Land Grading Machines.
122	30	Sheep Dip.
125	19	Parallel Bars.
126	21	Wall Chest Machines.
128	5	Statuary.
129	31	Gas Radiators.
130	32	Sad Irons.
131	42	Sweeping Compound.
131	43	Tags.
131	57	Talking Machine Horns.
131	68	Chloronation Barrels.
132	10	Oil Storage Tanks.
132	27	Stationary Casks.
132	37	Tents.
135	37	Clamps.
135	54	Iron Jacks.
135	59	Pipe Benders.
136	13	Circular Saw Frames.
136	25	Wrenches.
139	29	Vehicles, crated.
141	1	Spring Wagons.
141	6	Delivery Vehicles.
142	9	Buggies and Buckboards.
142	15	Carriages and Wagonettes.
142	18	Road Carts.
142	23	Hearses.
142	28	Racing Wagons.
142	32	Sleighs.
144	11	Hubs.
144	50	Wagon Seat Springs.
147	8	Washing Machines.
147	15	Clock Watches.
149	30	Wooden Wear and Wood Fibre Ware.
150	6	Pulled Wool.

Provision for the following articles has been eliminated.

Footnote relative to packing Glass Bottles.

Footnote describing a Stand Nail Kegs.

Illuminated Signs.

Edge Tools N. O. S.

Tenoned Spokes and Hubs.

RULES AND CONDITIONS

—— OF ——

THE WESTERN CLASSIFICATION.

Weights, actual and estimated.

1. A. All articles will be charged at gross weight, without regard to weight given by shippers and inserted in bills of lading; except that when an estimated weight is given in the Classification, such estimated weight will apply unless the actual weight is greater.

Dunnage.

*B. *The estimated weights shown in the Classification apply only on the packages named, and will not include dunnage used in connection therewith, dunnage being ratable at actual weight and rates applying on the article shipped.*

Articles not classified.

2. When articles are not classified, or not clearly analogous to articles which are, a special ruling must be asked for.

Articles falsely described.

3. When articles are shipped under false names, in order to deceive the carrier, or to avoid this Classification, Agents at destination will collect charges according to proper classification, and in case of loss or damage, consignees will be paid for the articles as called or shipped. Releases to valuation or statements of prescribed valuation shown in Classification will not be accepted on shipments falsely described by consignors, such shipments being ratable as if no release or statement had been made.

*4. Ratings made in this Classification are for shipments made subject to the following conditions:

Immunities of Carriers.

No carrier or party in possession of any of the property provided for in this Classification shall be liable for any loss thereof or damage thereto, from causes beyond its control, or by floods, or by fire, or by quarantine, riots, strikes or stoppage of labor, or by leakage, breakage, chafing, crushing, loss in weight, changes in weather, heat, frost, wet or decay, rust of metals or metallic goods, escape of bees, live poultry or live fish, tearing, cutting or soiling of fabrics or paper in bales or bundles, fermentation of liquids, chipping of stone or manufactures thereof, injuries of live animals to themselves or each other, or from any cause to property carried on open cars. *Shippers who do not desire to forward shipments under above rule must note on shipping order or bill of lading "Carrier's Risk." in which case an additional charge of 20% will be made.*

Charges on complete articles shipped in pieces.

5. When parts or pieces constituting one or more complete articles are offered to carriers for transportation at one time by one shipper to one consignee and destination, they will be rated at the classification provided for the complete article whether set up or knocked down as specified in the Classification.

Maximum and Minimum C. L. weights.

6. A. Carload freight will be rated and charged according to the current rules governing maximum and minimum weights of carloads as authorized by the companies adopting this Classification, but in no case, unless specially provided for in the Classification, will a carload be considered less than 20,000 lbs. on freight *classified* in carloads 3d Class and higher, and less than 30,000 lbs. on freight *classified* in carloads lower than 3d Class, except that the minimum

carload weight on shipments in tank cars shall be the full capacity of tank. Provisions for carload ratings shown in the Classification will apply only upon shipments received in one day from one consignor, under one bill of lading, and delivered under one expense bill to one consignee. Carload rates are not applicable on freight consigned to R. R. Agents.

Minimum weights on light and bulky freight.

B. Minimum weights provided in Classification will apply on all sizes of cars, except that premium and deduction charges will be applied to light and bulky articles designated by note, whether loaded in box cars or on open cars.

Upon such light and bulky articles, the standard car will be 36 feet, inside measurement, 3% per foot to be added for each foot in excess of 36 feet, and 3% per foot to be deducted for each foot less than 36 feet, with a minimum of 91%, all percentages to be based on inside dimensions. In applying premium and deduction charges, fractions of a foot six inches or less to be disregarded. (See Table of Percentages and Minimum Weights on page 8.)

Ratings on mixed carloads and on articles for which no C. L. ratings are shown.

7. When rate for carload is not named the classification which is given will govern regardless of quantity, and no two or more articles having a carload rate shall be shipped in mixed carloads at the carload rate, unless so provided for in the Classification. (See Rule 21.)

Shipments in excess of one or more full carloads.

8. EXCESS OR LESS THAN CARLOADS.—When the minimum carload weight or more of one article is shipped in one day by one consignor to one consignee, covered by one bill of lading, the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots. The first car or cars must be loaded to their full capacity, and are subject to established rules for minimum weights, the actual weight of the balance, provided it is loaded in a box car, to be charged for at the carload rate, reference being made on the way-bill for the balance of the lot to the way-bill for the full carload or loads. This is intended to apply on all articles that are classified in both less than carloads, and in carloads in the numbered and lettered classes, except on carload freight taking minimum weights of less than 24,000 lbs., carload freight subject to Rule 6-B and shipments of Agricultural Implements (including Hand Implements), Vehicles, Parts of Vehicles, Live Stock, Furniture, Lumber, Articles taking lumber rates, Sash, Doors, Blinds, Scrap Iron and Junk, and all shipments any part of which is loaded in Refrigerator or Tank cars; in such cases excess lots will be charged for at less than carload rate.

Provisions for Live Stock loaded with Emigrants' Movables and for passage of Attendants.

9. EMIGRANTS' MOVABLES.—The number of Live Stock to a car of emigrants' movables will be limited to ten (Agents will take release, using the usual form of Live Stock Contract); transportation of man in charge will be governed by current rules of the companies adopting this Classification, but no passes will be given for man in charge of shipments unless the car contains Horses, Mules, Cattle, Calves, Sheep or Hogs.

Provision for stoves in cars with Perishable Freight and for passage of Attendants.

10. STOVES IN CARS.—During cold weather, when perishable property is liable to be damaged by frost, a pass may be given to one person who may be in charge of and accompanying shipments of one or more carloads of Green Fruits, Potatoes or other vegetables, when a stove is used for the protection of such property from freezing. No return pass will be given. Passes will not be given to persons in charge of Trees and Shrubbery. When stoves

requiring stovepipe are used, the stovepipe must be run through a board securely fastened at one side of the car door, and be fitted with an elbow projecting above the car not more than twenty-four inches; the wood work must also be protected from fire by sheet iron or tin facing. The stoves and lumber used in fitting up the car may be returned at one-half fourth class rates.

Packages containing articles differently classified.

11. Where not otherwise specified in the Classification, any package containing articles of more than one class will be charged at the L. C. L. tariff rate for the highest classed article contained therein.

Articles requiring two or more cars.

12. Charges for articles which on account of their length require two or more cars, shall be computed at carload rate and actual weight, subject to minimum weights established by carrier for each car used, provided that on articles having no carload rating or on less carload shipments of articles having a carload rating the minimum charge shall be equal to that for 5,000 lbs. at 1st Class rate for each car used.

Dunnage used on flat cars.

*13. An allowance, not to exceed 500 lbs., will be made for Racks, Standards, Strips, Supports and Blocks, furnished by shippers, on flat or gondola cars loaded with freight requiring their use. Provided, that in no case shall less than the specified minimum weight be charged on the property.

Companies will not be responsible for removal of or damage to temporary racks, or blocks, and it will be optional with them to remove or return them to shippers if not taken by consignees.

Ratings applicable on different kinds of packages.

14. A. Unless otherwise provided for in the Classification, all freight shipped in crates, racks, bales, bags or bundles will take when shipped in crates or racks the next class higher (greater) than in boxes, and when shipped in bales, bags or bundles one class higher (greater) than in crates. Where same rating is provided for articles shipped in bundles or boxes, the rating given will apply upon shipments of the same articles crated. When no rating is shown for articles in boxes, the rating shown for the same article in crates will apply. When not otherwise specified in the Classification, where the same rating is provided for articles shipped in crates or boxes, the same articles shipped in bundles will take the next class higher (greater) When not otherwise specified in the Classification, the rating given on shipments in boxes shall apply upon shipments in barrels or kegs, and vice versa. The terms "boxed," "in boxes," and "in barrels" used in the Classification are intended to mean completely enclosed, and will apply only on such packages made of wood, except as provided in paragraph "B" of this Rule and the term "crated" or "in crates" to mean enclosed on all sides, including bottom, with frame work, so as to allow of their being taken in and out of a car within the crate, and so as to fully protect the article from damage by contact with other freight, and the terms "in bags" and "in sacks" to mean bags or sacks made of other material than paper. All parts of articles provided for boxed or crated must be fully protected, as above stated, in order to entitle them to ratings provided, otherwise they are ratable as not boxed or crated. Shipments made in basket work packages (woven wood and wire), or in boxes with slatted tops, are ratable as crated. Shipments in pressed steel kegs are ratable same as if shipped in wooden kegs. Shipments in fibre pails, veneer lined, tin tops and bottoms, are ratable same as if shipped

Ratings applicable on different kinds of packages.

in wooden pails. Chests filled with goods are ratable the same as boxes filled with goods. Covers of chests must be securely fastened with nails or screws. Liquor packages smaller than barrels are ratable as kegs. Carriers shall have the right to decline shipments in insecure packages.

B. Unless otherwise specified in the Classification, freight shipped in pulp, fibre, or double faced corrugated waterproofed board packages (facings to be of fibre board) will take the ratings provided for the same shipments in wooden packages when meeting the following requirements:

Sec. 1. Pulp or fibre board packages constructed of three ply or more, glued solid fibre or pulp board not less than .060 inch in thickness, no single ply of which is less than .014 inch in thickness, and the combined ply having a resistance of not less than 150 lbs. to the square inch (Mullen Test), and gross weight of package not exceeding 50 lbs.

Sec. 2. Pulp or fibre board packages constructed of three ply or more, glued solid fibre or pulp board not less than .080 inch in thickness, no single ply of which is less than .014 inch in thickness, and the combined ply having a resistance of not less than 175 lbs. to the square inch (Mullen Test), and gross weight of package not exceeding 100 lbs.

Sec. 3. Pulp or fibre board packages constructed of three ply or more, glued solid fibre or pulp board not less than .060 inch in thickness, no single ply of which is less than .014 inch in thickness and combined ply having a resistance of not less than 150 lbs. to the square inch (Mullen Test), enclosed in wood frame made of strips not less than $\frac{7}{8}$x$\frac{7}{8}$ inches, and gross weight of package not exceeding 50 lbs.

Sec. 4. Pulp or fibre board packages constructed of three ply or more, glued solid fibre or pulp board not less than .060 inch in thickness, no single ply of which is less than .014 inch in thickness, and the combined ply having a resistance of not less than 150 lbs. to the square inch (Mullen Test), enclosed in wood frame made of strips not less than $\frac{7}{8}$x1$\frac{1}{4}$ inches, and gross weight of package not exceeding 100 lbs.

*Sec. 5. *Pulp or fibre board packages constructed of three ply or more, glued solid fibre or pulp board not less than .080 inch in thickness, no single ply of which is less than .014 inch in thickness, and the combined ply having a resistance of not less than 175 lbs. to the square inch (Mullen Test), the ends, sides, top and bottom made in separate panels, each panel completely surrounded by wood frame made from strips not less than $\frac{7}{8}$x1$\frac{1}{4}$ inches and reinforced by cross strips of same dimensions not more than fourteen inches apart, and gross weight of package not exceeding 200 lbs.*

Sec. 6. Double faced corrugated waterproofed board packages (facings to be of fibre board), gross weight of package not exceeding 100 lbs.

Sec. 7. All pulp or fibre board packages must bear the manufacturer's stamp showing specifications or number of section with which the package complies, or both, and all packages not enclosed in wood frame to be glued or otherwise securely fastened so that they cannot be opened without mutilating or destroying the package, and labeled, stamped or otherwise marked so as to correctly describe the contents, together with the name and address of the shipper.

Sec. 8. All shipments not conforming to the above requirements will take one class higher (greater) than in crates, except that shipments in pulp or fibre packages enclosed in wood frame work not conforming to the above requirements will be ratable as crated.

Ratings applicable on different kinds of packages.

15. The amount charged for less than a carload of freight should not exceed the charges on a minimum carload weight of the article.

Maximum charge for L. C. L. shipments.

16. A. Bulk freight will not be taken in less than carloads unless so specified in the Classification.

Bulk freight.

*B. *Consignors and consignees will be required to load and unload all freight upon which carload ratings are applied.*

Loading and unloading carload freight.

17. A. Shipments, including freight returned for repairs, loaded on open cars, are subject to a minimum charge equal to that for 5,000 lbs., at 1st Class rate, for each car used. Maximum charge provided by Rule 15 to be observed.

Minimum charge for articles loaded on open cars.

B. Articles too large to be loaded through side doors of 36-ft. box or stock cars (unless otherwise specified in Classification) shall be charged at actual weight and class rates for each article, provided that in no case shall the charge for the entire shipment be less than 5,000 lbs., at 1st Class rate, except on articles in which the only dimension that prevents loading through side doors is the length. In loading such articles the small end doors may be utilized without subjecting the shipment to a minimum charge of 5,000 lbs. at 1st Class rate.

Minimum charge for articles too large to be loaded through side doors of 36 ft. cars.

C. Shipments of Machinery, Implements and other commodities loaded on open cars must have all easily breakable and detachable parts removed and boxed and securely fastened to cars with metal straps or enclosed in machinery or implements.

Machinery on open cars.

18. When empty packages are offered for shipment at the rates provided in this Classification for returned empty packages, the Agent must satisfy himself that they have been used, when filled, in the transportation of a regular consignment and that they are returned to consignors of the original filled packages. If Agents have reasons to believe that the packages, when filled, were originally forwarded by Express, they will make a note to that effect on the way-bill, and charge at the regular rates for new packages.

Empty packages returned.

19. All freight is subject to transfer en route as the necessity or convenience of the carriers require, and should be loaded in such a manner that it can be transferred and reloaded without injury.

Freight subject to transfer.

20. All carload rates are made subject to release of carrier from damage to goods caused by unavoidable transfer en route, it being understood that no freight is authorized to be contracted through without transfer.

Conditions of Ratings of C. L. Freight which is subject to transfer.

21. A. Unless otherwise specified in the Classification, where two or more articles are mentioned in one item or bracketed items, they may be forwarded in straight or mixed carloads at the rate shown, except as provided in Paragraph "B" of this Rule.

Car Load Ratings on Articles included in one item or within the same bracket.

B. Carload ratings shown in the Classification for articles "Subject to Rule 21-B" will not apply on straight carloads of the articles named. In such cases the amount of the article so designated which may be included, shall not exceed 33⅓% of the minimum weight provided for the mixed carload.

Carload ratings "Subject to Rule 21-B."

Car Service and trackage charges.	22. All property shipped in carloads shall be subject to the Car Service and Trackage charges of the forwarding and delivering railroads.
Inspection.	23. Shippers should express, on bills of lading for C. L. shipments, their wishes in the matter of allowing inspection by consignees of property at destination before payment of charges and surrender of bills of lading. Unless notation is made that such inspection may be allowed, it is assumed by the carrier that it is forbidden.
Ice for preservation of freight.	*24. Ice furnished by shippers for preservation of freight in carloads loaded in refrigerator cars not exceeding 3,000 lbs. for each car used, will be carried free. *Ice used as preservative in excess of free allowance will be rated same as article with which it is shipped.*
Freight likely to damage other freight.	25. Carriers shall have the right to refuse to receive any freight offered for shipment which is likely to damage other freight or cars.
Charges on articles K. D.	26. Where the Classification provides separate ratings for articles S. U. and K. D., the charges on any article shipped K. D. should not exceed what would accrue on the same article when shipped S. U.
Marking miscellaneous shipments.	27. Each package, bundle or piece of less than carload freight must be plainly marked with the full name or initials of consignee, and the destination in full, to insure proper delivery even if separated from the way-bill. The marks on packages should be compared with the shipping order and bill of lading, and correction, if necessary, made by the shipper or his representative. Old marks must be removed or effaced. Freight consigned to a place of which there are two or more of the same name in the same State must not be forwarded unless the name of the County be given. When freight is consigned to a place not located on the line of a railroad, the shipper must be requested to state the name of the railroad station at which the consignee will accept delivery, or if destined to a place reached by a water line, the name of the railroad station at which delivery is to be made to such water line. Freight will not be received for transportation unless the above conditions are complied with, and agents and connections are instructed to strictly enforce the same in all cases.
Freight consigned to shipper's order.	*28. *The issuing of bills of lading for shipments consigned "to order" will not be permitted, unless the name of the person, firm or corporation to whose order the shipment is consigned, is plainly shown after the words "to order" and issuing bills of lading for freight consigned to shipper's order at one point, notifying consignee at another point, will not be permitted, except where consignees are located at prepay stations or interior points, in which case freight must be consigned to the nearest convenient open station.*
Lottery Matter.	29. Freight containing any certificate, coupon or other papers purporting to be a ticket or chance in any lottery or similar enterprise, or offering any prize dependent upon lot or chance, or any advertisement of the same, will not be received, its transportation being forbidden by law.

30. Any shipment which, in the judgment of the forwarding railroad agent, would not, at forced sale, bring the amount of the freight charges at destination, must be prepaid or guaranteed. Articles of less value than freight charges.

31. The term "nested," as used in the Classification, covers a series of two (2) or more like articles, fitting one within another. Articles nested.

32. A. The Classification of articles in the rough applies to such articles when sawed, hewn, planed or bent, and before any further manufacturing process has begun. Articles in the rough, in the white, and finished.

B. The Classification of articles in the white applies after the manufacturing process has begun (and may include one coat of priming), but not when the article has been painted or varnished.

C. The Classification of articles finished applies to the article after it has passed the stage of manufacture covered by sections "A" and "B" of this Rule.

33. Where the Classification provides rates for articles in tank cars, it should be understood that such rating does not carry any obligation on the part of the carrier to furnish tank cars in case the carrier does not own, or has not made arrangements for supplying such equipment. Articles in tank cars.

Table showing minimum C. L. weights applicable under Rule 6-B to light and bulky freight shipped in cars of different lengths. (Inside dimensions.)

Length of Car (Dimensions inclusive	33 ft. 6 in. and under.	33 ft. 7 in. to 34 ft. 6 in.	34 ft. 7 in. to 35 ft. 6 in.	35 ft. 7 in. to 36 ft. 6 in.	36 ft. 7 in. to 37 ft. 6 in.	37 ft. 7 in. to 38 ft. 6 in.
Per Cent.	91	94	97	100	103	106
Minimum Weights						
5,000 lbs.	4,550	4,700	4,850	5,000	5,150	5,300
8,000 "	7,280	7,520	7,760	8,000	8,240	8,480
9,000 "	8,190	8,460	8,730	9,000	9,270	9,540
10,000 "	9,100	9,400	9,700	10,000	10,300	10,600
11,000 "	10,010	10,340	10,670	11,000	11,330	11,660
12,000 "	10,920	11,280	11,640	12,000	12,360	12,720
14,000 "	12,740	13,160	13,580	14,000	14,420	14,840
15,000 "	13,650	14,100	14,550	15,000	15,450	15,900
16,000 "	14,560	15,040	15,520	16,000	16,480	16,960
18,000 "	16,380	16,920	17,460	18,000	18,540	19,080
20,000 "	18,200	18,800	19,400	20,000	20,600	21,200

Length of Car (Dimensions inclusive)	38 ft. 7 in. to 39 ft. 6 in.	39 ft. 7 in to 40 ft. 6 in.	40 ft. 7 in. to 41 ft. 6 in.	41 ft. 7 in. to 42 ft. 6 in.	42 ft. 7 in. to 43 ft. 6 in.	43 ft. 7 in. to 44 ft. 6 in.
Per Cent.	109	112	115	118	121	124
Minimum Weights						
5,000 lbs.	5,450	5,600	5,750	5,900	6,050	6,200
8,000 "	8,720	8,960	9,200	9,440	9,680	9,920
9,000 "	9,810	10,080	10,350	10,620	10,890	11,160
10,000 "	10,900	11,200	11,500	11,800	12,100	12,400
11,000 "	11,990	12,320	12,650	12,980	13,310	13,640
12,000 "	13,080	13,440	13,800	14,160	14,520	14,880
14,000 "	15,260	15,680	16,100	16,520	16,940	17,360
15,000 "	16,350	16,800	17,250	17,700	18,150	18,600
16,000 "	17,440	17,920	18,400	18,880	19,360	19,840
18,000 "	19,620	20,160	20,700	21,240	21,780	22,320
20,000 "	21,800	22,400	23,000	23,600	24,200	24,800

Length of Car (Dimensions Inclusive)	44 ft. 7 in. to 45 ft. 6 in.	45 ft. 7 in. to 46 ft. 6 in.	46 ft. 7 in. to 47 ft. 6 in.	47 ft. 7 in. to 48 ft. 6 in.	48 ft. 7 in. to 49 ft. 6 in.	49 ft. 7 in. to 50 ft. 6 in.
Per Cent.	127	130	133	136	139	142
Minimum Weights						
5,000 lbs.	6,350	6,500	6,650	6,800	6,950	7,100
8,000 "	10,160	10,400	10,640	10,880	11,120	11,360
9,000 "	11,430	11,700	11,970	12,240	12,510	12,780
10,000 "	12,700	13,000	13,300	13,600	13,900	14,200
11,000 "	13,970	14,300	14,630	14,960	15,290	15,620
12,000 "	15,240	15,600	15,960	16,320	16,680	17,040
14,000 "	17,780	18,200	18,620	19,040	19,460	19,880
15,000 "	19,050	19,500	19,950	20,400	20,850	21,300
16,000 "	20,320	20,800	21,280	21,760	22,240	22,720
18,000 "	22,860	23,400	23,940	24,480	25,020	25,560
20,000 "	25,400	26,000	26,600	27,200	27,800	28,400

READ RULES AND CONDITIONS CAREFULLY.

THE WESTERN CLASSIFICATION.

EXPLANATION OF CHARACTERS.

The Figures, given after articles, signify:
1=First Class.
2=Second Class.
3=Third Class.
4=Fourth Class.
5=Fifth Class.
1½=One and One-Half Times First Class.
D 1=Double First Class.
2½=Two and One-Half Times First Class.
3 t 1=Three Times First Class.
3½t 1=Three and One-Half Times First Class.
4 t 1=Four Times First Class.
(Progression of Classes above First Class is by One-Half Classes.)
Classes A, B, C, D and E refer to Table of Rates.
C. L.=Car Load.
K. D.=Knocked Down.
L. C. L.=Less than Car Load.
Min. wt.=Minimum weight.
N. O. S.=Not Otherwise Specified in this Classification.
P. P.=Prepaid.
S. U.=Set Up.

The figures on left side of column are for convenience in referring to ratings.
The classification on articles marked * has been changed since last issue.

	A	C. L
1	†**Advertising Matter,** printed, N. O. S. (exclusive of signs and show cards), boxed or in bundles, prepaid.....1	
2	Advertising Matter consisting of almanacs, circulars and pamphlets, for advertising purposes only, value not exceeding 5c per lb. and so receipted for, in bundles or boxes prepaid or guaranteed.....2	3 Min. wt. 24000 lbs.
3	Chinese, Japanese and Palm-leaf Fans, with advertisements printed on the face, and Catalogues, boxed or in bundles, prepaid.....1	
4	Advertising Racks (sheet iron) nested solid, boxed or crated..2.....4	
5	Advertisement Frames, crated...2	
6	**Agricultural Implements,** not including hand implements, as follows:	
7	Agricultural Implements, Windmills, and parts thereof, returned to *factory making them* or original point of shipment, provided same are accompanied by an order from the *original shipper or* manufacturer authorizing the return of the goods and name and address of consignor plainly shown on billing, will be charged half tariff rates, otherwise full tariff rates will be charged. All charges to be prepaid.	
8	Barrel Carts:	
9	Set up, on wheels.....1½	
10	K. D. flat.....1	A Min. wt. 20000 lbs.
11	Bean Pickers, S. U. crated..1½	
12	Beet Harvesters:	
13	Set up.....1	
14	K. D., in bundles.....2	
15	K. D., boxed or crated.....3	
16	Boll Weevil Machines, K. D. flat.....3	

†Advertising Matter, printed (including signs, showcards and pictures, not framed, with advertisements printed on face), not to exceed 500 lbs., may be shipped with carloads of articles advertised at the carload rate of articles shipped. Advertising Matter, printed, not framed, including printed paper bags and paper cut-outs, all with advertisements printed on the face thereof, not to exceed 10 per cent of gross weight of shipment, with maximum of 250 lbs., may be shipped in same packages with articles advertised at the same rating as the articles advertised. Lottery Tickets or any offers of prizes dependent upon lot or chance, and printed matter advertising the same, not taken. (See Rule 29.)

READ RULES AND CONDITIONS CAREFULLY.

	A	C. L.
	Agricultural Implements—Cont'd.	
1	Blue Grass Strippers:	
2	S. U.	D 1
3	K. D., small parts boxed...	3
4	Bulky and Light Implements, N. O. S.:	
5	Set up.	D 1
6	K. D. flat, in bundles.....	1
7	†Clover Hullers, Power Corn Huskers and Ensilage Cutters, Corn Crushers, Power Corn Shellers, Separators or Threshers:	
8	One, S. U. (with or without horse power), requiring open car, min. wt. 5,000 lbs	1
9	One (with steam power), C.L. rate.....	
10	Two (with or without horse-power), C. L. rate.....	
11	K. D., except Corn Huskers, small parts in pkgs, loaded in box car, actual weight..	1
12	Power Corn Huskers and Ensilage Cutters and Corn Shellers, sufficiently K. D. to be loaded in box cars, but carried mounted on wheels for convenience of carriers.....	1
13	Corn Binders, K. D. flat.....	3
14	Corn Huskers and Fodder Shredders, K. D., small parts in bundles.....	3
15	Corn Harvesters:	
16	S. U.....	1
17	K. D	3
18	Combined Corn Harvester and Shocker:	
19	Set up.....	1
20	K. D. flat.....	3
21	Combined Corn Picker and Husker:	
22	K. D. in packages.....	3
23	Elevator detached, otherwise S. U.....	1
24	Corn Planters (two-horse):	
25	Set up	D 1
26	K. D. flat, in packages.....	3

A Min. wt. 20000 lbs.

	A	C. L.
	Agricultural Implements—Cont'd.	
27	Corn Shellers (hand):	
28	S. U.....	1
29	K. D. (tables, wheels and cranks removed).....	3
30	Cotton Picking Machines, wheels on or off, other detachable parts removed....	1
31	Cotton Planters:	
32	Set up.	1
33	Handles detached.....	2
34	K. D., in bundles, boxes or crates	3
35	Cultivators (iron or wood):	
36	Set up.	D 1
37	K. D. flat, in bundles.....	3
38	With arch bars attached, otherwise K. D.....	2
39	With wheels, poles, handles, shovels and whiffletrees detached.	1
40	Disc Sharpeners, boxed or crtd.:	
41	S. U.....	1
42	K. D.....	2
43	Drills:	
44	Corn and Grain (one-horse):	
45	Set up.	1
46	K. D., in bundles, boxes or crates.....	3
47	Field Roller.....	3
48	Seed (seeders), N. O. S., including two-horse Grain Drills, and Broadcast Sowers (sowing attachment for farm wagon):	
49	Set up.	D 1
50	K. D., small parts in packages.	3
51	§Engines:	
52	Farm, Portable, on own wheels, small detachable parts removed and boxed or protected by crating..	1
53	†Traction (steam or gasoline), on own wheels, min. wt. 10,000 lbs. each.....	2
54	Tenders (two-wheeled) for traction engines, taken apart, wheels and poles detached, actual weight..	2

A Min. wt. 20000 lbs.

†With shipments of Threshers, Separators, Traction Engines and Hay Presses, there may be included Canvas Covers, Hoisting Jacks, Boiler Tubes, Fire Brick, Hose, Belting and Pumps to equip such implements.

§When shipments of Traction or Farm Engines require flat or gondola cars for transportation, the loose and detachable parts thereof must be placed in iron-bound boxes and securely attached to the engine or to the car floor directly under the engine. (Exception to Rule 17-C.)

	A Agricultural Implements—Cont'd.	C. L.
1	Evaporators, Sugar:	
2	Set up.	1½
3	Taken apart in sections	2
4	Evaporator Pans, galvanized steel and copper (for sugar evaporators), crated	2
5	Grain Heading Machines, K.D., in pieces, small parts in packages.	3
6	Harrows:	
7	N. O. S.:	
8	Set up, with teeth.	1½
9	K. D. and tied in bundles, teeth removed.	3
10	Folded, rolled or flat, teeth in, but sharp points not exposed.	3
11	Coulter, packed flat.	2
12	Disc, and Combined Disc Harrows and Seeders:	
13	Set up.	1½
14	With weight boxes attached, in sections, levers, irons and seats removed and tied in bundles	3
15	Harrow Carts:	A Min. wt. 20000 lbs.
16	K. D. flat.	3
17	S. U.	D 1
18	Harrow Frames, without teeth, K. D., in bundles.	3
19	Harvesters, self-binding:	
20	Set up.	D 1
21	K. D., small parts in packages, sickles detached from platforms or points of sections protected by wooden strips, and knives immovably fastened to prevent slipping.	3
22	Hay Carriers and Hay Carrier Returners.	2
23	Hay Carrier Track, in bdls	3
24	Hay Forks (horse)	2
25	Hay or Straw Stackers or Rickers, Cane Loaders, Hay and Shock Loaders, Mower Bunchers, Self-Pitchers, and Sweep Rakes:	
26	N. O. S.	1
27	K.D. flat, tied in bdls., wheels racked, actual weight	3
28	Hay Pulleys, in bxs. or barrels	3
29	Hay and Stock Racks Combined, K. D., in bdls	1
30	Hay Racks:	
31	In bundles.	2
32	Iron, nested, in bundles.	3
33	Hay Slings, in bundles.	2
34	Hay Tedders:	
35	N. O. S.	D 1
36	K. D. flat, and tied in bdls.	3
37	Hoes, Rotary (horse power):	
38	Set up.	1½
39	Poles, seats and rotaries removed.	2
40	Horse Powers, Tread and Sweep:	
41	Set up.	1
42	K.D., gear wheels on or off.	3
43	Horse Rakes:	
44	Iron N. O. S., or wood	1
45	Sulky:	
46	Set up.	D 1
47	K. D. (wheels, shafts, tongues, frames, seats and cleaners detached)	3
48	Lay Off Machines, K. D. flat, in bundles.	A Min. wt. 20000 lbs. 3
49	Manure and Fertilizer Spreaders:	
50	Set up.	1½
51	K. D.	3
52	Manure Loaders, K. D., in bundles.	3
53	Mills:	
54	Cane	3
55	Cider and Cob.	2
56	Combined Corn and Cob Mills and Sweep Powers (sweeps detached)	3
57	Mowers, N. O. S.:	
58	Set up.	D 1
59	Wheels on or off, other detachable parts removed.	3
60	Pea Hullers (hand):	
61	S. U.	1
62	K. D.	3
63	Pea Hullers (power):	
64	Set up, min. wt. 5,000 lbs. each	1
65	Taken apart and loaded in box car, actual weight	1

†Shipments of Gang and Sulky Plows, to be entitled to K. D. rating, should have poles detached; whiffletrees and eveners detached and tied in bundles; levers detached and tied in bundles or laid down flat and tied to beams; and seats, wheels and coulter blades detached.

	A	C. L.
	Agricultural Implements—Cont'd.	
1	Plows:	
2	N. O. S.:	
3	Set up. 1	
4	K. D., in bundles. 3	
5	Gang, Sulky, Rotary and Walking, wheeled:	
6	Set up. . . . . D 1	
7	†K. D. flat, and tied in bundles. 3	
8	†K.D.crated, coulter blades attached, other requirements as shown in note below. 3	
9	Listing, Riding:	
10	Set up. . . . . D 1	
11	†K. D. flat, and tied in bundles. 3	
12	†K.D.crated, coulter blades attached, other requirements as shown in note below. 3	
13	Potato Cutters, K.D., in bdls. 3	A
14	Potato Diggers:	Min.
15	Wheeled:	wt.
16	Set up. . . . . D 1	20000
17	K. D., wheels on or off, other detachable parts removed and in packages. 3	lbs.
18	Walking:	
19	S. U. . . . . D 1	
20	K.D. flat and tied in bundles 3	
21	Potato Planters (wheeled):	
22	S. U. 1½	
23	Taken apart, wheels on or off, small parts tied in bundles 1	
24	K. D., flat and tied in bundles 3	
25	‖Presses, Hay:	
26	Wheels on or off, other detachable parts removed, small parts in packages. . . 3	
27	With or without power, loaded on open car, min. wt. 5,000 lbs. each. 1	

	A	C. L.
	Agricultural Implements—Cont'd.	
28	Reapers:	
29	S. U. . . . . D 1	
30	Wheels on or off, other detachable parts removed. . 3	
31	Rollers, Field. 3	
32	Sage Brush Grubber:	
33	Set up, with teeth. 1½	
34	K. D. and tied in bundles, teeth removed. 2	
35	Folded, rolled or flat, teeth in, but sharp points not exposed. 2	
36	Stalk Cutters:	
37	N. O. S. 1	
38	Roller:	
39	Set up. . . . . D 1	
40	K.D.,in pieces,small parts in packages. 3	
41	Tanks, wooden, for threshers:	
42	N. O. S. 1	
43	12 ft. or over in length. . . . 1½	
44	Tobacco Transplanters:	A
45	Set up. . . . . D 1	Min.
46	K. D. flat, tied in bundles. . 1	wt.
47	Tree Diggers:	20000
48	Set up 1½	lbs.
49	K. D., in bundles. 1	
50	Trucks, Agricultural Implement (two wheeled), K. D., wheels packed separately. . 3	
51	Twine, Binding, for Harvesters, in bales. 3	
52	Wagon Dumps and Elevators combined, K. D., castings boxed, other parts in bundles. 3	
53	Wagon Dumps, S. U. 1	
54	Wagons, Tank (for farm engines), taken apart, loaded in box cars, estimated wt. 2,000 lbs. each. 1	
55	Weeders, Double Disc:	
56	S. U. 1½	
57	In sections, levers, irons and seats removed and tied in bundles. 3	
58	Windrowers, K.D. in bundles. 2	

†Shipments of Gang and Sulky Plows, to be entitled to K. D. rating, should have poles detached; whiffletrees and eveners detached and tied in bundles; levers detached and tied in bundles or laid down flat and tied to beams; and seats, wheels and coulter blades detached.

‖With shipment of Threshers, Separators, Traction Engines and Hay Presses, there may be included Canvas Covers, Hoisting Jacks, Boiler Tubes, Fire Brick, Hose, Belting and Pumps to equip such implements.

READ RULES AND CONDITIONS CAREFULLY.

	A	C. L.
	Agricultural Implements—Cont'd.	
1	Wire, Binding, for Harvesters, on spools, boxed.....4	
2	**Agricultural Implements, Parts of:**	
3	All parts, N. O. S.....1	
4	Automatic Corn Drill Droppers, in boxes or barrels.....2	
5	Band Cutters and Self Feeders:	
6	S. U.....1	
7	K. D.....3	
8	Binding Attachment for Harvesting Machines, boxed or crated.....2	
9	Brakes, Traction Engine, bxd or crated.....3	
10	Bundle Carriers, in bundles...3	
11	Check Rowers.....2	
12	Check-Rower Wire, in bundles or on reels.....3	
13	Cutter Bars, steel, in bundles..1	
14	Disc and Drag Bar Attachments, for seed drills, in boxes or casks.....3	
15	Draper Sticks or Apron Slats, Hay Sling Slats and Reel Sticks:	
16	In bags or bundles.....2	A Min. wt. 20000 lbs.
17	In boxes.....3	
18	Iron Master or Bull-wheels, N. O. S.....2	
19	Iron Castings (cast iron parts of Agricultural Implements, N. O. S.), plain or dipped to preserve from rust, not further manipulated:	
20	N. O. S., loose.....1	
21	In bundles.....3	
22	Each weighing 100 lbs. or over, loose.....4	
23	In boxes or barrels or in gunny or jute bags.....4	
24	Knives, Band Cutter and Self Feeder, boxed.....2	
25	*Knives and Guard Plates, Mower or Reaper:	
26	In bundles or incased in boards.....1	
27	In boxes.....3	
28	Mower Knife Grinders, boxed or crated:	
29	S. U.....1	
30	K. D.....3	
31	Mower Knife Guards, in boxes, barrels or kegs.....4	

	A	C. L.
	Agricultural Implements, Parts of —Continued.	
32	Rasps for Clover Hulling Cylinders.....3	
33	Reaper and Mower Knife Sections, boxed.....3	
34	*Springs, Agricultural Implement:	
35	Coiled:	
36	In bundles.....1	
37	In boxes.....2	
38	Nested, in boxes.....3	A Min. wt. 20000 lbs.
39	N. O. S., in boxes or bbls..3	
40	Seats, iron, implement, nested.3	
41	Spring Keys or Cotters, in boxes or barrels.....4	
42	Sulky Attachments, for walking implements, K. D.....3	
43	Sweep Bars or Levers.....2	
44	Threshing Machine Teeth, in boxes, barrels or kegs.....3	
45	Thresher Screens (pressed sheet metal), boxed or crated....3	
46	Weight Boxes, Harrow, nested 3	
47	Wheels, steel flanged.....3	
48	NOTE 1:—Gasoline Engines packed as required under Machinery, Combined Corn and Cob Mills, Grain Grinding Mills, N. O. S. (exclusive of roller mills), Clevises, Rake Teeth, iron or wood, Wrenches (Agricultural, iron or steel), and Monkey Wrenches, may be shipped in mixed C. L. with Agricultural Implements mentioned above at Class A, min. wt. 20,000 lbs. (Subject to Rule 21-B.)	
49	NOTE 2:—Farm Wagons and Farm Trucks may be shipped in mixed C. L. with Agricultural Implements at Class A, min. wt. 20,000 lbs.	
50	Castings, Agricultural Implement, not further finished than being cleaned and drilled with bolt holes.....5	
51	Clevises, Plow and Wagon:	
52	In boxes or barrels.....4	5
53	In barrels, with cloth tops..2	
54	Corn Huskers and Shredders, min. wt. 14,000 lbs. C. L., (Subject to Rule 6-B).....4	
55	Coulter Plates, Rolling Coulters, and Harrow Plates and Discs:	
56	In bundles.....2	5
57	In boxes or casks.....3	
58	Cultivator Shields, nested 3	

		C. L.
	Agricultural Implements, Parts of —Continued.	
1	Doubletrees, Equalizers, Neck-yokes, Singletrees and Whiffletrees:	
2	Finished 2	
3	In the white, ironed..... 3	... A
4	Plow Points and Plow Handles.	
5	Dumps, Broom Corn, K. D. flat, min. C. L. wt. 20,000 lbs....3	.... A
6	Grain Baggers 2	
7	Grain Lifter Guards:	
8	In bundles..... 2	
9	In boxes or casks..... 3	5
10	*Grass Catchers, in crates.....2	
11	Plow Beams (iron or steel)....3	5
12	Plow Beams (wooden), N. O. S.:	
13	In bundles.. 2	
14	In boxes or crates.....3	...B
15	Plow Handles, in bundles, boxes or crates 3	
16	Plow Bottoms, complete:	
17	In boxes or bundles.....3	
18	C. L.....	5
19	Poles:	
20	Finished 1	
21	In the white, ironed.....3	
22	Press Drill Shoes:	
23	In bundles..... 2	
24	In boxes or casks..... 3	5
25	Rake Teeth (iron or wood), in bundles..... 3	4
26	Steel Plates or Shapes for plow-shares, mould-boards, cultivator shovels, spades or shovels and Disc Blanks or Shapes, sheared to shape, not further finished.....4	5
27	Teeth, Cultivator, Drag or Harrow and Cultivator Shovels:	
28	In barrels or boxes.....3	
29	In bundles 2	5
30	Tool Boxes (stamped steel), boxed or crated.....3	
31	Wheels, Ag'l. Imp't., N. O. S. min. C.L. wt. 24,000 lbs....3	5
32	Windmills and Windmill Attachments, Windmill and Hand Pumps, wood and iron, Pump Cylinders, Pipe and Pipe Connections for same, Steel and Wood Tanks, Angle Iron and Timber prepared for Windmill Towers, and Iron Supports for Water Tanks. Shipments of Pipe for connecting Pump Heads and Cylinders must not exceed two-thirds of total weight of Pumps and Pipe.	A Min. wt. 24000 lbs.

		C. L.
	Agricultural Implements, Parts of —Continued.	
	Windmills and Windmill Attachments, Etc.--Cont'd.	
	Iron Supports for Water Tanks. Shipments of Pipe for connecting Pump Heads and Cylinders must not exceed two-thirds of total weight of Pumps and Pipe.	A Min. wt. 24000 lbs.
33	**Agricultural Implements, Hand:**	
34	Broadcast Seeders, crated....1	
35	Corn Huskers, boxed.....1	
36	Corn Planters, in bundles, boxes or crates.....1	3
37	Cultivators, wood and iron, K. D. in bundles.....1	
38	Corn Hooks and Knives:	
39	In bundles 1	
40	In boxes 2	
41	Forks, in bundles, boxes or crates:	
42	Barley (wood or iron).....1	
43	Beet, Hay and Manure.....2	
44	Grain Cradles:	
45	K. D., in bundles.....D 1	
46	K.D.and completely boxed.2	
47	Hay Knives:	
48	In bundles 1	
49	In boxes 2	
50	Hoes:	
51	N. O. S., including Rotary Hoes, in bundles, boxes or crates 2	
52	Eye, in barrels.....3	3
53	Wheel, boxed or crated....1	
54	Wheel and Seed Drills, combined, boxed or crated...1	
55	Wheel and Cultivators, combined, boxed or crated...1	
56	Post Hole Diggers.....2	
57	Potato Hooks, in bundles.....2	
58	Potato Planters, handles taken off, in bdls, bxs or crates....2	
59	Potato Sorters, K. D., crated..3	
60	Rakes, in bdls, bxs or crates:	
61	Wooden 1	
62	Iron..... 2	
63	Reaping Sickles:	
64	In bundles 1	
65	In boxes 2	
66	Rollers, Garden and Lawn....2	

	A	C. L.
	Agricultural Implements, Hand—Cont'd.	
1	Scythes:	
2	In bundles, N. O. S.	1
3	In bundles, wrapped in excelsior and double burlap	2
4	Boxed,	2
5	Scythe Snaths, in bundles, boxes or crates	1
6	Scythe Stones, in boxes, barrels or crates	3
7	Seed Drills, handles in bundles, other parts boxed or crated	1
8	Seed Drills and Cultivators combined	2
9	*Shovels, Grain or Potato, in bundles, boxes or crates	2
10	Shovels and Spades, in bundles, boxes or crates	2
11	Weeders and Mulchers with Cultivator Attachment, boxed or crated	2 — 3
12	Fanning Mills (Subject to Rule 6-B):	
13	Set up.	D 1
14	K. D., flat in bundles	1
15	With fan boxes detached and packed inside main frame	1
16	With fan box packed beneath sieve box and within main frame.	1 — 2 Min. wt. 12000 lbs.
17	Fanning Mills, K. D., straight C. L., min. wt. 20,000 lbs.	A
18	Feed and Ensilage Cutters (Subject to Rule 6-B):	
19	Set up.	1
20	K. D., small parts in pkgs.	3 — 3 Min. wt. 16000 lbs.
21	Alaskan Images or Totem Poles, boxed or crated, prepaid	3
22	Albums, boxed	1
23	Almond Shells, in bags or casks	4
24	Aluminum Ware, in bxs. or bbls.	1½
25	‡Animal Foods and Medicines:	
26	Animal Condiments (ground, for use in making Animal Foods), in boxes or barrels, min. C. L. wt. 24,000 lbs.	1 — 4
27	Animal and Poultry Powders or Tonics, dry, in glass, tin or paper cartons, boxed	1

	A	C. L.
	‡Animal Foods and Medicines—Cont'd.	
28	Animal and Poultry Food, prepared, in cartons weighing 1½ lbs. each or over, boxed, in bulk boxed, in pails, veneered drums, barrels or bags.	4 — B
29	Dog Cakes or Biscuits, in boxes or sacks	3
30	Mocking Bird Food in pkgs.,	2
31	Poultry Food:	
32	Ground Meat and Bone or Grain Screenings and Oyster Shell, in bags	4 — B
33	Buttermilk, condensed, in barrels	5
34	Animal Heads and Horns:	
35	Deer and Buffalo Horns, boxed.	1
36	Elk Heads and Horns, S. U. mounted, boxed or crated	D 1
37	Elk Horns, separated, unmounted, in bales	1
38	*Wild Animal Heads, in the rough, separated, unmounted, boxed or crated	1
39	Animal Pokes:	
40	N. O. S.	1
41	Steel, in bundles, wired	2
42	Animals, Live, N. O. S., in boxes or cages	3 t 1
43	Animals, Stuffed, in boxes	3 t 1
44	Apple Driers, in bundles, boxes or crates	D 1
45	Apple Parers, in boxes or crates.	2
46	Aquariums:	
47	N. O. S., boxed	3 t 1
48	Fish Globes, in boxes, barrels or casks	D 1
49	**Artists' and Photographers' Materials:**	
50	Blue Print Machines, K. D., boxed	1½
51	Burnishing Machines, Photographers', boxed	2
52	Cameras, boxed	D 1
53	Camera Stands and Background Holders, Photographers':	
54	Set up, crated or wrapped.	D 1
55	K. D., tied in bundles	1½
56	K. D., boxed or crated	1

‡On shipments of Animal Foods and Medicines, all charges must be guaranteed, and on returned shipments must be prepaid.

READ RULES AND CONDITIONS CAREFULLY.

Artists' and Photographers' Materials—Cont'd.

1 Cloth (photographic background), in bxs, bales or rolls. 1
2 Crayons, Artists', boxed. 1
3 Easels (common pine), in the white, K. D., crated. 2
4 Films, picture machine, bxd. D 1
5 Leather Kodak Boxes, boxed or crated:
6 Nested. . . . . D 1
7 Not nested. . . . . 3 t 1
8 Negative Cotton. . . . . 3 t 1
9 Photographers' Head Rests (iron), K. D., boxed. 3
10 Photo Dry-Plates, boxed. 1
11 Photo Japanned Tin Plate, boxed 1
12 Photo-Negatives, old, returned, boxed 4 5
13 Photographic Material, N.O.S., boxed 1
14 Photograph Cards, boxed. 1
15 Picture Matting, boxed or crated. 2
16 Stretcher Frames:
17 Artists', K. D., crated. 3
18 Common Pine, K.D., in bdls., boxes, crates or casks. . . . 3
19 Stretchers, boxed or crated. . . 1
20 Artists' Materials, N.O.S., boxed. . 1
21 Ash Sifters, in bxs, crates or bdls. 1
22 Autographic Sales Registers (metallic), boxed. 1
23 Automatic Cork Pullers, boxed. . 2
24 Automatic Stock Fountains, nested, crated. 4 5
25 Awning Frames, Roller, K. D., castings boxed, wooden rollers in bundles. 3
26 Awnings and Awning Frames: N. O. S., in bundles, boxes or casks 1
27 Corrugated Steel, and Fixtures. 2

28 **Babbitt Metal.** 4 5

29 Baby Jumpers, in boxes, crates or bundles. 1
30 Bag Holders:
31 Iron, boxed. 2
32 Spring, in bundles. 1

33 **Bagging and Bags:**

34 N. O. S., in bales, min. C. L. wt. 24,000 lbs. 2 3
35 Cartridge, raw silk, boxed. . . . 1
36 Clayed in bales or bundles. . . . 3
37 Bags, Burlap, Gunny or Jute, in bales or bundles. 3 4
38 Bags, Cotton, Cotton Seed, Grain or Salt, in bales or trusses, min. C. L. wt. 24,000 lbs. 2 3
39 Bags, Planters' Picking, in bales or bundles. 1
40 Bags, Water (hemp), min. C. L. wt. 24,000 lbs. 2 3
41 †Burlaps and Jute, in bales or bundles. 3 5
42 Burlap and Jute Webbing, in bales. 2
43 Burlap Press Cloth, in bales. . . 1
44 Balloons, boxed, hoops tied in bundles, fixtures packed securely in covered baskets. . . . . 3 t 1
45 Bark:
46 N. O. S.:
47 Loose, in bags or barrels. . . . 1
48 Pressed in bales. 2
49 Machine compressed, boxed. . 2
50 Tanners': C
51 In bags, boxes or casks. . . . . 3 Min. wt 24,000 lbs.
52 In bulk. . . . . .
53 Spent: E
54 In packages . . . . . 4 Min. wt. 24,000 lbs.
55 In bulk. . . . . .
56 Barrel Storage Racks, K. D. flat, and packed in bundles, min. C. L. wt. 24,000 lbs. . . . . 3 . . . . . B
57 Barrel Racks (for grocers' use). . 2
58 Base Knobs, in packages. 2

59 **Baskets, C. L.** (Subject to Rule 6-B):

60 Nested or K. D., min. wt. 10,000 lbs. 2
61 Not nested or K. D., min. wt. 5,000 lbs. 1
62 Nested and not nested, mixed C. L., min. wt. 5,000 lbs. 1
63 Baskets, L. C. L.:
64 N. O. S., not nested, in bdls. 4 t 1
65 N. O. S., nested, in bundles. D 1

†On shipments of second-hand Burlaps, charges must be prepaid.

	B	C. L.
	Baskets, L. C. L.—Continued.	
1	In cases	D 1
2	Bamboo Telescope, nested, in boxes, bundles or crates	1½
3	Bread Shipping	1½
4	Canvas, nested, in bundles or crates	1½
5	Canvas, Laundry Shipping	1½
6	Laundry Shipping, with tight wooden covers	1½
7	Over-handled, in bundles, with ends placed in each other	4 t 1
8	Refrigerator:	
9	In bundles	D 1
10	In crates	1½
11	Stave, Splint, Rattan or Willow; nested, in boxes, bundles or crates	1½
12	Splint, with wood or tin covers, closely nested, racked	1
13	Fruit, nested (Subject to Rule 21-B)	B
14	Fruit Basket Crates, K. D	B
15	K. D. flat, Basket Bottoms and Covers (solid wood), and Basket Material, Splint, Stave or Slat, in bundles	3 B
16	Over-handled, covers and handles packed separately, or without covers or handles, baskets nested in bundles (Subject to Rule 6-B)	1 (4 Min. wt. 18000 lbs.)
17	Paper, Fruit or Peach:	3
18	In bundles	3 t 1
19	Nested	2
20	C. L., min. wt. 16,000 lbs.	
21	Baskets, Transfer or Ambulance	1½
22	Basket Holders, wooden, folded flat, crated	2
23	Bee-Comb Foundation and Bee Combs, empty, boxed	1
24	‖Bee Hives (Subject to Rule 6-B)	3 (Min. wt. 15000 lbs.)
25	Nested	1
26	K. D.	3
27	K. D. and Honey Box Lumber	D
28	Bee Smokers, in boxes or barrels	D 1
29	Bees, in hives, all openings to be securely closed with wire cloth	D 1 3
30	Beeswax Cracklings or Refuse	3
31	Beer Casks, metal	D 1
32	Beer Coolers, metal (applicable only on the article used in breweries):	
33	In box cars	1½
34	On flat car, min. wt. 5,000 lbs.	1
35	K. D. flat	1
36	Beer and Liquor Coolers (copper-lined box, with beer pump attachment)	1
37	Beet Pulp, Dried:	
38	In sacks or barrels	4
39	In bulk	E
40	Beet Sugar Refuse, in tank cars. (See Rule 33.)	E
41	Bellows, N. O. S.	1
42	Bells, N. O. S., including Yokes and Attachments:	
43	N. O. S.	2
44	Iron	3
45	Bins:	
46	Flour:	
47	Wooden, S. U.	1½
48	Wooden, K. D., boxed or crated	3
49	Tin, plain or japanned, boxed or crated	1½
50	Nail, Revolving:	
51	Crated	1½
52	Taken apart, bins nested	2
53	Bird Gravel or Sand, in pkgs.	2
54	Bird Seed and Broken Cuttle Fish Bone	3
55	Birds, alive, N. O. S., in cages, NOT ACCEPTED.	
56	Blackboards:	
57	Blackboard Cement, in cans, boxed, or in wood	4
58	Blackboards, Slate or Wooden, boxed or crated	2 4
59	School Drawing Boards, without legs, boxed or crated	3
60	Blackboards and Desks combined, folded flat, crated	2
61	Blackboards, Folding, Toy or Kindergarten, boxed	1
62	Blackboard Slate, liquid, in cans, boxed, or in wood	4
63	Paper and Cloth, silicated, for Blackboards, in bundles	1

‖Bee-Comb Foundation Starters, not exceeding one per cent of entire weight of package, may be included with shipments of Bee-Hives and Honey Box Lumber.

READ RULES AND CONDITIONS CAREFULLY.

	B	C. L.
	Blackboards—Continued.	
1	Wood Pulp Boards, silicated, boxed or crated	2 — 4
2	Blacking:	
3	Harness Blacking, Leather Dressing and Harness Oil, N. O. S.:	
4	Invoice value exceeding 50 cents per gallon or value not stated:	
5	N. O. S., in boxes or kegs	1
6	In glass or stone, packed in boxes or barrels	1½
7	In cans, jacketed	D 1 — 3
8	In flat top cans, completely enclosed in wood	1
9	In bulk, in barrels	1
10	Invoice value not exceeding 50 cents per gallon and so receipted for:	
11	N. O. S., in boxes or kegs	2
12	In glass or stone, packed in boxes or barrels	1
13	In cans, jacketed	1½
14	In flat top cans, completely enclosed in wood	2 — 4
15	In bulk, in barrels	2
16	Shoe Blacking, Dressing or Polish:	
17	N. O. S., in boxes or kegs	2
18	In glass or stone, packed in boxes or barrels	1
19	Bleach, Glycerine, in barrels or kegs	1
20	**Boats and Ship Chandlery:**	
21	Boat Building Material:	Lumber Tariff Rates
22	Sawed to length, not further finished	4
23	Bent to shape, crated	1
24	Boat Sails	1
25	Canvas Boats, folded, in rolls or packed in chests	1
26	Launches, Electric, Steam and Gasoline:	
27	N. O. S. (minimum charge 5,000 lbs. each, at 1st class)	2½ t 1 — 2 Min. wt. 10000 lbs.
28	Loaded through ordinary sliding side doors of box cars	D 1
29	Boats, N. O. S.	4 t 1
30	Launch Frames	
31	Steam Yachts	

	B	C. L.
	Boats and Ship Chandlery—Cont'd.	
32	Metallic Life Rafts	D 1
33	Oars, in bundles or boxes, min. C. L. wt. 24,000 lbs.	2 — 4
34	Racing Shells	4 t 1
35	Rigging, including Wire Rope and Attachments, in bdls	3
36	River Steamboats, wooden parts of, min. C.L. wt. 24,000 lbs.	3 — B
37	Row Boats, K. D. flat, crated	1
38	Sectional Boats taken apart, sections nested	D 1
39	Steamboat Pitmans	3
40	Boiler Arches, combined cast iron and fire brick	4 — 5
41	Bone Ash	4 — B
42	Bone Black	2 — 4
43	Bone, Cuttle Fish:	
44	N. O. S., in packages	1
45	Broken, in packages	2
46	Bone Dust	4 — B
47	Bone, Ground or Cracked	4 — B
48	Book Covers, bound, in boxes	1
49	Books, in boxes, nailed, or hinged and locked	1
50	Books, School (second-hand), returned, P. P. or guaranteed	2
51	**Boots and Shoes, and Findings:**	
52	Boots and Shoes:	
53	Boxed	1
54	In sample trunks:	
55	Metal	1
56	Wooden, boxed or iron bound and ribbed	1
57	Boot Crimps, boxed	1
58	Cobblers' Outfits, consisting of Tools, Nails, Lasts and Stands	2
59	Cut Soles, Counters, Heels and Taps, leather	2
60	Heel Plates, in boxes or casks	4
61	Last Blocks, in the rough	4 — B
62	Lasts and Shoe Stands, Cast Iron, in boxes or casks:	
63	N. O. S.	3
64	Not further finished than as from mould	4 — 5
65	Lasts, N. O. S., in boxes or barrels	2
66	Leather Boot Legs and Shoe Uppers, boxed	1
67	Rivets, Tubular or Slotted, in boxes, barrels or kegs	1

	B	C. L.
	Boots and Shoes and Findings—Continued.	
1	Shoe Covers, paper, cut to shape	2
2	Shoe Felt (paper), crated	2
3	Shoe Findings, N.O.S., boxed	1
4	Shoe Forms, cardboard, wood-pulp or fibre, boxed	1
5	Shoe Pegs:	
6	In bags	1
7	In boxes, barrels or kegs	2
8	Shoe Shanks (steel), in pkgs.	2
9	Shoes, Wooden, in bxs. or brls.	2
10	Shoe Button Fastening, Staples, boxed	1
11	Bottles:	
12	‡Glass, N. O. S., and Glass Jars (exclusive of carboys):	
13	*In boxes, barrels, crates or casks	3
14	In wooden bottle carriers, filled with bottles	3
15	In bulk	
16	In barrels with gunny cloth heads	2 — 5
17	In barrels without heads, or boxes without covers	1
18	In barrels, contents secured by cleats at top of barrel	1
19	Demijohns:	
20	N. O. S.	D 1
21	In boxes, casks or crates	1
22	Packed in cork and burlap	1
23	Disinfectant Bottles, in metal jackets	1
24	Bottle Caps, pulpboard, boxed	3
25	Bottle Fittings, N.O.S., consisting of corks, caps, and stoppers, boxed or in splint baskets with tight wooden covers	1
26	Bottle Stoppers (combined metal and rubber), boxed	2
27	Bottle Wrappers:	
28	N. O. S., flat, in boxes or bundles, P. P.	2
29	Paper, N.O.S., or Wood Bottle Wrappers, and Wood Partition Bottle Packing, flat, in barrels, boxes or bundles	3 — 4
30	Straw Bottle Wrappers, flat, in barrels, boxes or bundles, min. C. L. wt. 20,000 lbs.	2 — 4
31	Bowls (pressed steel), Bakers':	
32	Not nested, in bxs. or crates	1
33	Nested, in boxes or crates	2
34	**Boxes and Crates:**	
35	Ballot	D 1
36	Berry:	
37	In bundles or crates	1
38	Min. C. L. wt. 10,000 lbs. (Subject to Rule 6-B)	2
39	K. D., in crates	3
40	K.D., min. C.L. wt. 24,000 lbs.	B
41	Bit Boxes, in boxes, barrels or crates	2
42	Boxes and Store Drawers (hardwood), N. O. S., nested, boxed	1
43	Blacking (tin):	
44	Boxed or crated	1
45	Nested in bxs., bbls. or crates	2 — 5
46	Chisel, crated	1
47	Cigar, empty:	
48	In bundles or crates	D 1
49	Boxed	1½
50	K. D. flat, in packages	2
51	Cracker (tin):	
52	N. O. S., empty.	
53	Boxed, crated, or in jackets, min. C.L. wt. 12,000 lbs. (Subject to Rule 6-B)	1 — 3
54	N. O. S.	D 1
55	With glass fronts, boxed	D 1
56	Crates (wooden):	
57	Folded flat, min. C. L. wt. 20,000 lbs.	3 — B
58	K. D., tops, sides, ends and bottoms made up, min. C. L. wt. 20,000 lbs.	3 — B
59	Fibre or Cardboard Egg Shipping Boxes, with corrugated paper fillers:	
60	S.U., in bdls., crates or bxs.	D 1
61	K. D. flat, in bundles, crates or boxes	2 — 4
62	Fibre Packing Boxes:	4 Min. wt. 20000 lbs. (Subject to Rule 6-B.)
63	N. O. S., empty	D 1
64	Nested	1
65	K.D., min. C.L. wt. 24,000 lbs.	4 — B
66	Fig, paper sides, wood tops and bottoms, nested, boxed	1

‡Fittings belonging to the Bottles and Jars shipped, may be included in mixed C. L. at 5th Class. Glass Fruit Jars in fibre board packages or wooden boxes are subject to requirements shown under "Fruit Jars."

		B	C. L.
		Boxes and Crates—Continued.	
1		Folding Boxes (wooden), folded flat	3	B
2		Insect Boxes (wood, pasteboard and cork), boxed or crated	D	1
3		Jewelers' Plush, boxed	D	1
4		Lunch (leatheroid), boxed or crated:		
5		Nested	1	
6		Tin lined, not nested	1½	
7		Paper Boxes, not exceeding 12 united inches (length, width and height added), boxed	1	
8		Paper Boxes, S.U., in boxes or bundles, min. wt. 5,000 lbs., (Subject to Rule 6-B)	1½	
9		Paper or Pasteboard Boxes, including Paper Flower Pots or Flower Pot Covers, Strawboard Partitions for Candy Pails, Strawboard Cracker Pails, Strawboard Cartons, Paper Candy Boxes, and Leatheroid Boxes, N. O. S.:		
10		†Nested and boxed or crated	D	1
11		Not nested, boxed or crated	3	t 1
12		K. D. flat, in bundles, crates or boxes	2	4
13		Pasteboard Covers, boxed	D	1
14		Police Patrol Boxes, cast iron, boxed or crated	2	
15		Shelf (combined wood and strawboard), boxed or crated	D	1
16		Shipping, corrugated paper, sides folded flat, covers and bottoms made up	D	1
17		Sluice Boxes, wooden, min. C. L. wt. 24,000 lbs	3	C
18		Stereotype and Electrotype, boxed or crated	1	
19		Tailors' Dummies or Cloth Rolls, boxed	3	t 1
20		Thread Trays, made of wood and pasteboard, boxed	D	1
21		Tool Boxes, farriers'	1	
22		Turpentine Boxes, iron, closely nested	3	5
23		Waste Paper, iron:		4 Min. wt. 18000 lbs. Subject to Rule 6-B.
24		N. O. S.	D	1
25		Boxed or crated	1	
26		Nested, boxed or crated	2	
27		Tobacco (hardwood)	1	2 Min. wt. 12000 lbs.
28		‡Wooden, N. O. S., empty	D	1
29		Crates N. O. S. (new), empty	D	1
		(C.L., Subject to Rule 6-B)		
30		Wooden, packing, nested three in a nest	3	B
31		Wooden, not exceeding 9 inches in length, crated or boxed	2	
32		Wooden (turned), in barrels, boxes or crates	2	
33		Wooden, K. D. flat, covers made up, iron strap hinges and cover fasteners attached	4	B
34		Box Frames and Covers, wooden, frames nested three or more in a nest, covers tied in bundles	3	B
35		Box Material, wired, in bundles or rolls	4	D
36		**Brass Articles:**		
37		Bars (bronze), Tubing (brass), Flues, Tubing (bronze), Rolls:		4
38		In bxs., brls., casks or kegs	2	
39		N. O. S.	1	
40		Belt Fasteners, boxed	1	
41		Blanks, Bolts, Nails, Plates, Rivets, Rods, Screws and Sheets:		
42		N. O. S.	1	
43		In boxes, brls, casks or kegs	2	
44		Brass Residue or Ashes:		
45		In barrels	4	
46		In bulk or in packages		D
47		Castings	2	
48		Chain, in boxes or casks	1	

†Ratings for nested paper boxes will apply only on packages in which one-third of the space is saved by nesting.

‡Wooden Packing Boxes, containing a small quantity of chaff, sawdust, shavings or other cheap article, shipped with the intention of evading the classification, are ratable as Wooden Boxes.

	B	C. L.
	Brass Articles—Continued.	
1	Doors and Thresholds:	
2	N. O. S.	4
3	Boxed or crated	
4	Faucets, in boxes or casks	2
5	Fenders, Stove or Hearth, in boxes, barrels or crates	2
6	Fittings, including Brass and Bronze Valves, in boxes, barrels or kegs	2
7	Ingots	3 4
8	Railing, boxed	1
9	Sheet Brass Screen Plates:	
10	N. O. S.	4
11	In boxes, brls., casks or kegs	
12	Shovels, Tongs, Pokers, and Stands for same (fire sets), packed	1
13	Vessels, N. O. S., in boxes or barrels	1
14	Well Strainers, boxed	2
15	Bread, in boxes or barrels or baskets with tight covers:	
16	N. O. S., P. P. or guaranteed	1
17	Hard Bread	2 4
18	**Brick:**	
19	Acid or Digester (used in paper mills):	
20	In barrels or boxes	4
21	In carloads	E
22	Bath, in barrels or boxes	4 B
23	Common N. O. S.	4
24	Fire (except Stove Lining), and Fire Clay	4
25	Fire, for furnace lining	4
26	Paving	
27	Porous	4
28	Pressed and Ornamental Figured	4 E
29	Silicate	4
30	Tank Blocks and Flattening Blocks (fire clay)	4
31	Shaped, invoice value not exceeding $5.00 per ton, and so receipted for:	
32	In boxes, barrels or crates	4
33	In bulk	
34	Shaped, N. O. S.:	
35	In boxes, barrels or crates	3
36	In bulk	D

Boxes and Crates—Continued.

	B	C. L.
	Brick—Continued.	
37	Enameled or Glazed:	
38	In barrels or boxes	4
39	In carloads	B
40	Loaded in cars with common and pressed brick	4
41	Fire Brick, Fire Clay, Drain Tile, Sewer Pipe and Flue Lining and Vitrified Coping	D
42	Ground Brick in bulk, in bbls.	4 D
43	Slate and Ground Slate (used in brick making)	4 D
44	Stove Lining:	
45	Loose	1
46	In boxes or barrels	4
47	In barrels with cleated heads	4 5
48	In barrels without heads	2
49	Brick Drying Shelves (shooks or pallet boards), in bundles, boxes or crates	3 B
50	Bridge Material:	
51	Iron and wooden	5
52	Wooden	4 B
53	Britannia Metal, in sheets or rolls, in boxes, barrels, half barrels or casks	1
54	Britannia Ware, in boxes or barrels	1½
55	Bronze Castings:	
56	N. O. S.	2
57	Unfinished, weighing 100 lbs. each or over	3 4
58	Broom Corn:	
	LOOSE NOT TAKEN.	
59	Pressed in bales, min. C. L. wt. 14,000 lbs. (Subject to Rule 6-B)	1 3
60	Broom Corn Balers, K. D	2
61	Brooms:	
62	In bales, racks or bundles, min. C. L. wt. 10,000 lbs. (Subject to Rule 6-B)	1 2
63	Brooms and Brushes (manufactured from broom corn), in packages, min. C. L. wt. 10,000 lbs. (Subject to Rule 6-B)	1 2
64	Brushes:	
65	Bristle, N. O. S., and Hair, in boxes	1
66	Brushes, silver mounted, boxed	1½
67	Steel Bristle:	
68	In bundles	1
69	In boxes	2

	B	C. L.
	Brushes—Continued.	
1	Vegetable Fibre, N. O. S.:	
2	In bundles	1
3	In boxes	2
4	Waxing, weighted, wrapped	2
5	Wood Fibre:	
6	In bundles	1
7	In boxes	2
8	Brush Blocks N. O. S., and Eraser Blocks, in bxs., crates or bdls.	3
9	Brush Blocks, Leather, in boxes, crates or bundles	2
10	Brush (for street sweeping machines), in bundles	2
11	*Brush (for riprapping), to protect the banks of streams	D
12	Buckets, Coal Dump, iron	2
13	Buckets, Ore:	
14	Wooden	1
15	Iron	2
16	Buhr Blocks	3
17	*Bullion and Mint Sweepings, NOT TAKEN.	
18	Bung Discs or Coverings (sheet metal), in packages	3
19	**Burial Cases, Coffins and Grave Vaults:**	
20	Burial Cases, Caskets or Coffins, N. O. S.:	
21	Not boxed, crated or wrapped, NOT ACCEPTED.	
22	Boxed	2
23	Crated and wrapped	1
24	Crated, not wrapped	1½
25	Wrapped, not crated	1½
26	In the white, not wrapped or crated	1
27	Crystal or Glass (metal frame, glass panels), boxed	1½
28	Metallic and Metallic Linings, boxed	1½
29	Grave Vaults, N. O. S.	1
30	Coffin Boxes:	
31	Plain Packing, empty, nested	2
32	Steel:	
33	K. D. flat, crated	4
34	C. L.	
35	Coffins, plain, wooden, not upholstered or lined, crated	1
36	Coffin Stock;	
37	Not further finished than sawed, dressed, and cut to shape, not bent (except woods of value)	3
38	In the white	2

3 Min. wt. 11000 lbs. Subject to Rule 6-B.

5

Lumber Tariff Rates.

A

	B—C	C. L.
	Burial Cases, Coffins and Grave Vaults—Continued.	
39	Coffin Trimmings, plated, bxd.	1
40	Casket Carriages, boxed or crated	D 1
41	Casket Lowering Device, crated	1½
42	Cooling Boards, undertakers', boxed or crated	2
43	Grave Vaults, K. D., crated:	
44	Cement	3 5
45	Slate	3 5
46	Pedestals, undertakers', boxed or crated	1
47	Button Blanks, in boxes or bags.	3
48	**Cabinets:**	
49	Carpet, taken apart, in packages	1
50	Cash Register, boxed	D 1
51	Dental, crated	1
52	Drug, boxed or crated	1
53	Dye, boxed	1
54	Electric Photo Printing, boxed or crated	1½
55	Filing, S. U. (Subject to Rule 6-B.)	
56	Boxed	1
57	Crated	1½
58	Wrapped	D 1
59	Filing, K. D., flat, boxed	2
60	Glove, boxed or crated	1
61	Ice Cream, boxed, crated or wrapped	1
62	Jewelers', boxed	1
63	Lace, crated	1
64	Painters', boxed	1
65	Pen, boxed	1
66	Ribbon Rolls or Cabinets:	
67	With Glass, boxed, bottoms crated	D1
68	Without glass, bxd or crtd	1
69	Surgical Instrument:	
70	N. O. S. crated	1
71	With glass fronts and sides, boxed, bottoms crated	D1
72	Thread:	
73	Empty or filled with thread, boxed	1
74	Tobacco, Plug, N. O. S., crated.	1
75	Vinegar	1
76	Cages:	
77	Bird:	
78	Boxed	3 t 1
79	Nested, boxed	1

3 Min. wt. 15000 lbs.

	C	C. L.
	Cages—Continued.	
1	Dipping, for dipping animals:	
2	N. O. S. 1	
3	K. D. 3	
4	Menagerie (wood and iron, without glass) 1	
5	Menagerie, K. D., flat, crated .. 2	
6	Squirrel (combined wood and metal) boxed 1	
7	Calf Feeders, boxed 2	
8	Calf Weaners, boxed 2	
9	Candelabra, nickel plated, bxd D 1	
10	Candy Coolers 4	
11	Canes in the rough, not further finished than being cut to length and shape:	
12	N. O. S. 1	
13	In bundles or bags 2	
14	Boxed or crated 3	
15	Cane Stakes, in bundles, min. C.L wt. 24,000 lbs 2 4	
16	Can Jackets, Wooden:	
17	Loose ..... D 1	
18	Nested, in crates or boxes ... 1½	
19	Can Keys, in packages 2 4	
20	**Canned Goods:**	
21	Capers:	
22	In glass, boxed 1	
23	In tin, boxed 3	
24	Condensed Milk, dry or liquid, and Evaporated Cream:	
25	In glass, boxed 3	
26	In cans, jacketed 2	
27	In cans, boxed 4	5
28	In barrels or half-barrels 4	
29	In cans, crated	
30	Evaporated Cream, in cans, loose . 1	
31	Fruit and Vegetables, N.O.S., including Baked Beans and Pork:	
32	In tin cans, boxed 4	
33	In cans, crated	5
34	In glass or stone jars, boxed . 4	
35	NOTE—Canned Sauer Kraut may be included with Canned Fruits and Vegetables in mixed C. L. at 5th Class.	
36	*Pickles (kraut, dill weed, cucumber, tomato, cauliflower and onion):	
37	In tin cans, boxed, or in bbls., kegs or kits 4	5
38	In tin cans, crated	

	C	C. L.
	Canned Goods—Continued.	
	Pickles—Continued.	
39	In glass or stone, boxed 4	
40	In pails or tubs 2	
41	Table Sauces, including Catsup, Horse Radish prepared, Mustard prepared, Pepper Sauce and Salad Dressing:	5
42	In glass or stone, boxed 3	
43	In tin, boxed 3	
44	In tin, crated	
45	In bulk, in barrels 3	
46	Olives, in glass, tin or stone, boxed or in wood 3	
47	Canned Meats and Soups, including Canned Sausage, Meats, potted and pickled, Chili Con Carne, Chicken Tamales, Corned Beef, Dried or Smoked Meats in glass, Corned Beef Hash, and Canned Meats with vegetable ingredients:	
48	In tin, boxed 4	
49	In cans, crated	5
50	In glass or stone jars, boxed . 4	
51	Walnut Juice and Walnut Pulp:	
52	In glass, boxed 1	
53	In tin, boxed 3	
54	Cans:	
55	Fruit cans (tin):	
56	Boxed or crated 1	
57	In bulk	4
58	Tin Cans, N. O. S., Tin Lard Pails, Tin Paint Pails, Lithographed Cans, Japanned Cans, Tin Oil Cans and Tin Boxes, N. O. S.:	Min. wt. 14000 lbs. Subject
59	N. O. S. ..... D 1	
60	Boxed, crated or jacketed . 1	
61	Nested in bxs., bbls. or crts. 2	to Rule
62	Lithographed Cans, wrapped with paper and crated 1	6-B
63	Galvanized Iron Cans, empty; Lard Coolers, galvanized iron, with Covers and Strainers:	4 Min. wt.
64	N. O. S. ..... D 1	18000
65	Boxed or crated, or in wooden or metal jackets .. 1	lbs. Subject
66	Nested, in boxes, barrels or crates 2	to Rule
67	Garbage or Ash Barrels, iron, N. O. S. 1	6-B.
68	Railroad Milk Shipping Cans .. 1	

	C	
	Cans—Continued.	
1	Tin Fruit Cans, Tin Cans, N. O. S., Tin Lard Pails, Tin Paint Pails, Lithographed Cans, Japanned Cans, Tin Oil Cans and Tin Boxes, N. O. S.	4 Min. wt. 18000 lbs. Subject to Rule 6-B
2	Leatheroid, Pasteboard, Fibre and Strawboard Cans.	3 Min. wt. 10000 lbs. Subject to Rule 6-B.
3	N. O. S. D 1	
4	Boxed or crated 1	
5	Nested, in bxs., bbls., or crates 2	
6	Oil Cans (paper, metal trimmed)	3 Min. wt. 14000 lbs. Subject to Rule 6-B.
7	N. O. S. D 1	
8	Boxed or crated 1	
9	NOTE:—Leatheroid, Pasteboard Fibre and Strawboard Cans may be shipped with Oil Cans (paper) in mixed C. L. at Paper Oil Can rating.	
10	Oil Cans (glass):	4 Min. wt. 24000 lbs.
11	In wooden jackets, boxed or crated 2	
12	In wire jackets, boxed 2	
13	In metal jackets, crated, min. C. L. wt. 26,000 lbs. 3 5	
14	Oil Cans (galvanized iron or tin), min. wt. 14,000 lbs. (Subject to Rule 6-B.) 4	
15	Roving Cans, used in cotton mills as receptacles for warp or yarn D 1	
16	*Vulcanized Fibre Cans:	2 Min. wt. 12000 lbs. Subject to Rule 6-B.
17	N. O. S. D 1	
18	Nested 1	
19	Capstans 2	
20	Carbon Clinker, in boxes, barrels, hhds. or sacks 4	Coke Tariff Rates
21	*Carburetors, boxed 1	
22	Cards, wool and cotton, in boxes, barrels or crates 2	
23	Carpets and Carpeting, in pkgs. 1	
24	Carpet (cork and rubber combined) 1	
25	Carpet Binding (metallic), in boxes or barrels 2	
26	Carpet Exhibitors, boxed 1	
27	Carpet Lining:	
28	Grass, min. C. L. wt. 24,000 lbs. 3 4	
29	Sewed:	
30	In bales, compressed 1	3
31	Felt paper for carpet lining	

	C	C. L.
	Carpet Lining—Continued.	
32	Stair Pads, cotton 1	
33	Straw Paper, min. C. L. wt. 24,000 lbs. 2 4	
34	Carpet Samples, in telescopes 1	
35	Carpet Stretchers, boxed 2	
36	Carpet Sweepers, boxed 1	
37	Carpet Warp in bundles, or on beams 1	
38	Carpet Weighting, boxed 2	
39	Carriage Heaters, boxed 1	
40	**Carriers, New, Empty:**	
41	Banana Crates:	
42	S. U., min. C.L. wt. 5,000 lbs. (Subject to Rule 6-B.) D 1 1	
43	K. D. (hoops, slats and burlap bagging) 3 4	
44	Barrels, Lard, iron, min. C. L. wt. 18,000 lbs. (Subject to Rule 6-B.) 1 4	
45	Barrels, Oil, iron, min. C. L. wt. 16,000 lbs. (Subject to Rule 6-B.) 1 D	
46	Barrels, Powder (leatheroid) D 1	
47	Bicycle Crates, K. D. 1	
48	Bottle Carriers, wood or steel, min. C. L. wt. 18,000 lbs. (Subject to Rule 6-B) 2 3	
49	Breeding Crates, K. D. 2	
50	Butter Carriers (glass jars and tops) 2	
51	Butter Carriers (glass), packed one each in galvanized iron pails 1	
52	Butter Carriers, Refrigerator 2	
53	Carboys, min. C. L. wt. 16,000 lbs. (Subject to Rule 6-B) 2 3	
54	Carriers, N. O. S. 1	
55	Chicken Coops:	
56	N. O. S. D 1	
57	Compactly folded, K. D. flat or with bottoms or tops detached and bottoms nested 2 B	
58	Cores, strawboard, for roll paper 2 3	
59	Cores, wooden, for bagging, sheathing, etc., in bundles 3	
60	Cracker Can Crates, folded flat in bundles 2	
61	Drums (iron and steel, new), under 10 feet in length, min. C. L. wt. 24,000 lbs. 3 A	

	C	C. L.
	Carriers, New, Empty—Continued.	
1	Drums, Jute:	2 Min. wt. 12,000 lbs. (Subject to Rule 6-B.)
2	N. O. S. ..... D	1
3	Nested	1
4	Fruit Chests, min. C. L. wt. 16,000 lbs. (Subject to Rule 6-B) ..... D	1 3
5	Fruit or Vegetable Crates, Folding, folded flat	3 .... B
6	Kegs, Powder (iron), min. C. L. wt. 14,000 lbs. (Subject to Rule 6-B)	1 4
7	Lift Vans, empty, min. wt. 5,000 lbs. each	1
8	Paper Frames, in bundles	1
9	Powder Magazines, N. O. S.	1
10	Quicksilver Flasks	4 C
11	Reels, Wire, Wire Rope and Cable:	3 Min. wt. 16000 lbs.
12	S. U.	2
13	K. D.	3
14	Refrigerator Boxes and Refrigerator Fish Boxes, N. O. S., min C. L. wt 24,000 lbs	2 4
15	Soda Water Retainers (metal) .	1
16	Spools, Barbed Wire, K. D.	3 C
17	Spools or Bobbins (wooden, for woolen mills), boxed	2 .... A
18	Transportation Boxes, for street lamp fixtures	1
19	‡**Carriers, Second-hand, Empty, Returned, Prepaid or Guaranteed.** (Subject to Rule 18):	
20	Ale, Beer, Beer Tonic, Mineral Water and Porter Packages, at following estimated weights (exception to Rule 1), one-half 4th Class rates:	
	Barrels, 100 lbs. each.	
	Half-Barrels, 55 lbs. each.	
	Quarter-Barrels, 30 lbs. each.	
	Eighth-Barrels, 20 lbs. each.	
	Bottles in cases with or without covers:	
	2 doz. qts., 50 lbs. per case.	
	4 doz. qts., 90 lbs. per case.	
	2 doz. pts., 35 lbs. per case.	
	3 doz. pts., 50 lbs. per case.	
	4 doz. pts., 75 lbs. per case.	

	C	C. L.
	‡**Carriers, Second-hand, Empty—Cont'd.**	
	Ale, etc., Packages—Cont'd.	
21	Bottles, in standard casks (casks 28½ in. long and 18½ inches in diameter at the heads), 150 lbs. per cask.	
22	*Acid, Ammonia and Glycerine Cylinders or Drums, Gas Cylinders (dental), Steel Drums (acetylene gas), Tar Oil Drums and Olive Oil Drums, one-half 4th Class (exception to Rule 18).	
23	Bags or Sacks, N. O. S., prepaid, in bxs, bales or bdls. If in bales or bundles to be securely bound with not less than three (3) separate wire or rope ties (rope not less than 3-16 inch in diameter), each package tagged with linen tags securely attached by wire, showing name and address of both consignor and consignee. Boxes also to be plainly marked, showing name and address of both consignor and consignee, one-half 4th Class. When not so shipped, 4th Class.	
24	Bags or Sacks, Flour, in bundles, each sack branded in plain black letters "second-hand" one-half 4th class (exception to Rule 18).	
25	*Barrels, N. O. S., wooden (exception to Rule 18)	4
26	Beams; Bobbins; Reels (except Cable); Spools; Paper Frames tied in bundles; and Carboy Frames, returned to manufacturers.	4
27	Bottles, Wine, Liquor, Soda and Pop, in bxs., bbls. or casks, with or without covers or heads, one-half 4th Class rates.	
28	Bottles, N. O. S., and Jugs, in boxes, barrels or casks, with or without covers or heads, actual weight	4

‡Charges for any shipment of carriers returned should not exceed what would accrue by application of ratings shown for the same packages new except on wooden oil barrels.

	C	C. L.
	‡Carriers, Second-hand, Empty, Returned—Continued.	
1	Bottle Cases	4
2	Butter Crocks or Jars, boxed	4
3	Butter Stands	4
4	Butter Tubs and Firkins	4
5	Cans, in boxes, barrels or crates	4
6	Cans, jacketed	3
7	Carboys	4
8	Car Seal Boxes	4
9	Cheese Boxes	4
10	Coops	4
11	Cones (paper), nested	4
12	*Cores, metal or wood, one-half 4th Class rates.	
13	Cracker Boxes	4
14	Cracker Boxes (tin), boxed	4
15	Crates	4
16	†Egg Cases	4
17	Fish Boxes or Cars	4
18	Fruit Baskets, Boxes, Chests and Crates	4
19	Fruit Refrigerators	4
20	Fruit Tree Boxes	1
21	Garden Seed Boxes	4
22	Ice Cream Packages	4
23	Iron Acid Drums	5
24	Iron Drums, N. O. S.	4
25	Iron Lard Cans	4
26	Iron Oil Barrels, min. C. L. wt. 16,000 lbs. (Subject to Rule 6-B.)	4 D
27	Kegs, Powder (wooden or iron)	4
28	Lamp Boxes	1
29	Lard Barrels, iron	4
30	Liquor Packages (wooden)	4
31	Meat Boxes or Carriers	4
32	Milk and Cream Cans	4
33	Mineral Water Cans	4
34	Oil Barrels (wooden), at the following estimated weights (exception to Rule 1):	D Min. wt. 14000 lbs. Subject to Rule 6-B.
35	Barrels, 70 pounds each	4
36	Half-Barrels, 44 pounds each	4
37	Oil Cases	4
38	Oyster Pails	4
39	Oyster Refrigerator Boxes	4
40	Piano Boxes	D 1
41	Piano Harness and Tarpaulins, boxed (exception to Rule 18)	4

	C	C. L.
	‡Carriers, Second-hand, Empty, Returned—Continued.	
42	Powder Magazines	4
43	Railway Trucks (used to transport rolling stock)	D
44	Reels, Cable and Wire Rope:	D Min. wt 24000 lbs.
45	In box cars	4
46	On flat car, min. wt. 5,000 lbs. (exception to Rule 17-A)	4
47	Safe Harness (iron)	4
48	Sheet Lead Carriers (boxes)	4
49	Telephone Packing Boxes	4
50	Wooden Boxes, N. O. S.	4
51	Cars, for tie treating plants, min. C. L. wt. 24,000 lbs	1 A
52	Cars, Photograph	A
53	Cases, Coin (metallic), nested, boxed	3
54	Cases (metallic, for screws, bolts and shot), in boxes or barrels	3
55	Cases, Screw, Shot and Bolt (wooden), boxed or crated	1
56	Cases, Spectacle and Eye Glass, boxed	1½
57	Cases, Watch Glass, boxed or crated	1
58	Cash Railways and Pneumatic Cash Delivery Outfits, boxed	1
59	Cattle Dehorners	2
60	Cattle Prods:	
61	In bundles	3
62	Boxed or crated	4
63	Cattle Stanchions, in bundles	2
64	Cedar Chests, crated:	
65	Not nested	D 1
66	Nested	1½
67	Celluloid, Fibreloid and Pyrolin in sheets, rods or tubes, boxed	1
68	Cellulose, in sacks	1
69	**Cement:**	
70	N. O. S., in boxes or casks	2
71	Asbestos and Sheep's Wool	3 5
72	Building:	
73	Building, in sacks	4 C
74	Domestic N. O. S., in barrels or in bags	4 C

‡Charges for any shipment of carriers returned should not exceed what would accrue by application of ratings shown for the same packages new, except on wooden oil barrels.

†When Egg Cases are returned from egg dealers to shipping point and new cases are substituted for old ones, the returned rating will apply.

	C	C. L.
	Cement—Continued.	
	Building—Continued.	
1	Flooring (powdered mineral, sawdust and liquid), in sacks or barrels 4	
2	Mortar Color, in barrels or bags 4	C
3	Portland (domestic or imported), in barrels or in bags 4	
4	Elaterite, in sacks 4	
5	Fruit Can Cement 3	5
6	Liquid, in glass, boxed 1	
7	Magnesia 3	5
8	Stove and Furnace 3	5
9	Cement Window Caps, Sills, Chimneys, Chimney Tops, Wall Coping and similar articles for building purposes, Flower Beds, Hitching Posts and Carriage Blocks, manufactured from cement ... 4	....B
10	**Cereals and Cereal Products:**	
11	Barley, Pearl:	
12	In sacks 3	
13	In boxes, barrels or kegs 4	5
14	Barley, Roasted:	
15	In sacks 2	
16	In boxes, barrels or kegs 4	5
17	Barley, Rolled:	
18	In sacks 2	
19	In boxes, barrels or kegs 4	5
20	Barley Sprouts and Malt Sprouts, dry 4	....B
21	Bran or Shorts:	
22	In bags 4	
23	In bulk	....B
24	Bread Meal, in bags, boxes or kegs 3	
25	Brewers' Refuse:	
26	N. O. S:	
27	In bags 4	
28	In bulk	... E
29	Dry, in bags 4	....B
30	Buckwheat:	
31	In bags or boxes 4	...B
32	In bulk	
33	Cereal Products and Preparations, N. O. S.:	
34	In paper sacks 2	
35	In cotton sacks 3	5
36	In boxes, kegs or barrels 4	

	C	C. L.
	Cereals and Cereal Products—Continued.	
37	Chopped Feed, Corn Meal, Flour and Bran, may be shipped in mixed carloads, at the highest rate applying on any of the articles.	
38	Corn Chaff (Subject to Rule 6-B):	
39	In sacks or boxes 1½	
40	In bulk ..... Min. C. L. wt. 10,000 lbs.	3
41	Corn Cobs:	
42	In sacks or boxes 2	
43	C. L., min. wt. 24,000 lbs	...E
44	Corn Meal, Brewers' Corn Meal, Grits and Hominy:	
45	In paper sacks 3	
46	In cotton sacks 4	5
47	In barrels or boxes 4	
48	Corn, Pop:	
49	In the ear 4	
50	Shelled, in boxes, barrels, or sacks 4	5
51	Corn (popped):	
52	In boxes or barrels .....D	1
53	In baskets with wooden covers securely fastened ..2½ t	1
54	Corn, Roasted and Buttered, in barrels 1	
55	Corn Stalk Pith, in boxes, sacks, or crates .....D	1
56	Feed, N. O. S., including Clover Meal, Gluten Meal, Ground Alfalfa, Corn Germ and Corn Germ Feed:	
57	In bags 4	
58	In bulk	.....B
59	Fenugreek Meal, in bbls. or sacks 4	
60	Flax or Linseed Meal, in boxes, barrels, casks or sacks 4	....B
61	Flour:	
62	N. O. S., including Flourine in jute sacks, Self-Rising or Pancake Flour, and Semita:	
63	In pails, covers well secured 4	
64	In barrels, 200 lbs. per barrel (exception to Rule 1) 4	5
65	In cotton sacks, or in boxes, actual weight ... 4	
66	In paper sacks, actual weight 3	

	Cereals and Cereal Products—Continued.	C. L.
	Flour—Continued.	
1	Buckwheat:	
2	In barrels, 200 lbs. per barrel (exception to Rule 1) 4	5
3	In cotton sacks or boxes, actual weight 4	5
4	In paper sacks, actual weight 3	
5	Potato, at actual weights:	
6	In pails, covers well secured 3	5
7	In barrels 3	
8	In cotton sacks or in boxes 3	
9	In paper sacks 2	
10	Grain, N. O. S., in bags, boxes or barrels 4	B
11	Grain Screenings:	
12	In bags 4	B
13	In bulk	
14	Granose Flakes, in boxes or barrels 2	
15	Granola Meal, in bags, boxes or barrels 3	
16	Kaffir Corn:	
17	In bags, boxes or barrels ... 4	B
18	In bulk ..... Min. wt. 24,000 lbs.	
19	Malt:	
20	In bags or barrels 4	B
21	In bulk	
22	Maltoid 4	
23	Matzos (unleavened bread), in boxes or barrels 2	4 Min. wt. 24000 lbs.
24	Matzos Meal, in boxes or barrels 2	
25	Middlings, Mustard:	
26	In bags 4	B
27	In bulk	
28	Oat Hulls or Oat Dust, min. C. L. wt. 24,000 lbs. 4	B
29	Oil Cake 4	B
30	Oil Cake Meal 4	
31	Poultry Meal (cereal):	
32	In bags 4	B
33	In bulk	
34	Puffed Rice:	
35	In boxes, kegs or barrels ... 4	5
36	In paraffine lined jute sacks 3	

	Cereals and Cereal Products—Continued.	C. L.
37	Puffed Wheat:	
38	In boxes, kegs or barrels. ... 4	5
39	In paraffine lined jute sacks 3	
40	Rice Bran, Polish, Hulls or Chaff, min. C. L. wt. 24,000 lbs.:	B
41	In bags 4	
42	In bulk	
43	Starch Refuse:	
44	N. O. S.:	
45	In barrels 4	E
46	In bulk	
47	Dry, in barrels 4	B
48	Wheat, Poisoned, in boxes or barrels 3	4
49	Chafing Dishes, boxed 1½	
50	Chandeliers, boxed:	
51	Metal 1	
52	Cut Glass ..... D 1	
53	**Chemicals and Drugs:**	
54	Acids:	
55	*Acetic, in barrels 3	
56	Boracic, in barrels 2	
57	Dry, N. O. S., in boxes or barrels 1	
58	Hydrofluoric:	
59	In guttapercha or ceresine wax bottles, hermetically sealed, packed in sawdust, boxed 1	
60	In lead carboys, boxed ... 1	
61	In casks 1	
62	Liquid Carbonic, including Liquid Carbonic Acid Gas, in metal drums 3	4
63	Muriatic, in tank cars (See Rule 33), 9.5 lbs. per gal. (exception to Rule 1) 4	
64	Nitric, in tank cars (See Rule 33), 11.25 lbs. per gal. (exception to Rule 1) 4	
65	Oxalic, in barrels or casks .. 2	
66	Pyroligneous, in barrels 4	
67	Sulphuric, in tank cars (See Rule 33), actual weight per gallon 4	
68	Carbolic, Crude, in wood or iron drums, min. C. L. wt. 24,000 lbs. 3	5

	C	C. L.
	Chemicals and Drugs—Continued.	
	Acids—Cont'd.	
1	Carbolic, N. O. S.:	
2	In tin cans, boxed.....2	
3	In metal drums.....2	
4	N. O. S., including Oil of Vitriol:	
5	In glass bottles, boxed...1	4 Min. wt. 24000 lbs.
6	In bottles, packed in sawdust, in barrels.....1	
7	†In carboys completely enclosed, necks protected on all sides by wood, P. P. or guaranteed..D 1	
8	In carboys, P. P. or guaranteed.....2½ t 1	
9	In iron drums or in wood..2	
10	Acids and Marble Dust, min. wt. 24,000 lbs.....4	
11	Alum.....3.....5	
12	Aluminum, Liquid Chloride of, in barrels, min. C.L.wt. 24,000 lbs.....3.....4	
	Ammonia:	
13	N. O. S.:	
14	In bottles, packed in sawdust in barrels, min. C. L. wt. 24,000 lbs ....1....4	
15	In carboys, prepaid or guaranteed.....2½ t 1	
16	†In carboys completely enclosed, necks protected on all sides by wood, P. P. or guaranteed...D 1	4 Min. wt. 24000 lbs.
17	In iron drums.....3	
18	In bottles or cans, boxed.1	
19	In bulk in barrels.....2	
20	In cans not boxed, NOT TAKEN.	
21	Aqua Ammonia, in tank cars (See Rule 33) 7½ lbs. per gal. (exception to Rule 1).....4	
22	Anhydrous Liquid:	
23	In iron cylinders, boxed or crated, or with valves protected by iron caps.1.....2	
24	In iron cylinders with valves exposed, not taken unless boxed or crated.	
25	Carbonate of, in sacks or bbls.....2.....4	

	C	C. L.
	Chemicals and Drugs—Continued.	
	Ammonia—Continued.	
26	Dry, in boxes or barrels....2	
27	Liquor in tank cars (See Rule 33), 9 lbs. per gallon (exception to Rule 1).....4	
28	Muriate of (sal ammoniac), in boxes or barrels.....2	
29	Nitrate of, min. C. L. wt. 24,000 lbs.....1.....4	
30	Sulphate of:	
31	N. O. S., min. C. L. wt. 24,000 lbs.....1.....4	
32	In bags.....5	
33	Argols, in boxes or barrels....2	
34	Arsenic and Bicarbonate of Soda (for killing weeds), in barrels.....4.....5	
35	Acetate Liquor (crude), in tank cars (See Rule 33), 8.44 lbs. per gallon (exception to Rule 1).....E	
36	Ash, Pearl or Soda:	
37	In barrels or casks.....4	
38	In cans, boxed.....3	
39	Potash N. O. S., in barrels or casks, or in cans boxed. ...4	
40	Soda Ash, in bags.....3	5
41	Carbonate of Potash:	
42	In cans, boxed.....3	
43	In cans, jacketed.....2	
44	In barrels or casks.....4	
45	Barium:	
46	Chloride of, or Splate, crude:	
47	In bulk, in casks.....4	
48	In paper cartons, boxed..4	5
49	Hydrate, in barrels, boxes or casks.....3.... A	
50	*Sulphate of (Blanc Fixe)...4....C	
51	Battery Fluid, in carboys.....1.....4	
52	Bismuth, in packages.....D 1	
53	Bleaching Fluid, in wood.....3	
54	Boiler Compound:	
55	Dry, in barrels, boxes or casks.3.....A	
56	Liquid:	
57	In barrels, casks, or iron drums.....3	
58	In cans, boxed.....3	....A
59	In cans, jacketed.....1	
60	Borax.....3.....5	
61	Brimstone:	
62	In boxes or kegs.....2	
63	In sacks, barrels or hhds....4	C

†Necks of carboys surrounded by two and one-half inch strips, the spaces between the strips not exceeding two and one-half inches, may be considered protected.

	Chemicals and Drugs—Continued.	C. L.
1	Brimstone and Sulphur	C
2	Bromine, taken only in glass, in tins hermetically sealed and packed in whiting	D 1
3	Brown Salt (waste material from chemical mills), in bbls.	4 — 5
4	Calcium:	
5	§Carbide of, including Acetylene Gas Powder and Calcium and Aluminum Carbide, in iron drums, or in tin cans boxed or completely jacketed	3 — 5
6	Chloride of:	
7	N. O. S.	3 } — 5
8	In iron drums	4 }
9	In tank cars (See Rule 33), 11.6 lbs. per gallon (exception to Rule 1)	5
10	Calcium Solution, in barrels	3 — D
11	Carbon, Bi-sulphide of:	
12	In iron drums	2 — 4
13	‡In cans, hermetically sealed, each weighing 5 lbs. or less, boxed	1
14	‡In cans, N. O. S. or in glass, boxed	3 t 1
15	Carbon Tetrachloride:	
16	In iron drums	3 — 5
17	In tank cars (See Rule 33), 13½ lbs. per gal. (exception to Rule 1)	5
18	Carboys and Contents:	
19	N. O. S.	2½ t 1
20	†Carboys completely enclosed, necks protected on all sides by wood	D 1
21	Chlorine, Liquid, in metal cylinders, boxed or crated, or with valves protected by iron caps	1
22	Copperas, or Sulphate of Iron	4 — 5
23	Drugs and Medicines, N. O. S., in boxes, barrels, or kegs	1
24	Embalming Fluid:	
25	In glass or jugs, boxed	1
26	In barrels or kegs	3

	Chemicals and Drugs—Continued.	C. L.
27	Ether and Chloroform in cans, sealed and boxed, or in iron drums	1
28	Ether, Butyric, in carboys	D 1
29	Ether and Chloroform in cans, not sealed and boxed, NOT TAKEN.	
30	Gas or Ammoniacal Liquor:	
31	In barrels	4 — 5
32	In tank cars (See Rule 33) 9 lbs. per gallon, (exception to Rule 1)	5
33	Glycerine, N. O. S.:	
34	In glass, boxed	1
35	In cans, boxed or jacketed	2 — 3
36	In barrels, drums or casks	3 — 4
37	Glycerine, Crude, in iron drums	4 — 5
38	Gum Camphor	1
39	Hydro Carbon or Gas Drips:	
40	In iron drums or in wood	3 — 5
41	In tank cars (See Rule 33), 8 lbs. per gal. (exception to Rule 1)	5
42	Iron, Chloride Solution, in wood	2
43	Iron, Sulphide of	4 — 5
44	Lead:	
45	Nitrate of:	
46	In boxes or bags	2 } — 5
47	In casks or barrels	3 }
48	Sugar or Acetate of:	
49	In boxes or bags	2 } — 5
50	In casks or barrels	4 }
51	Lime:	
52	Acetate of:	
53	In barrels, sacks or casks	4 — 5
54	Crude in sacks	D
55	Bi-sulphite of, in barrels	3 — 5
56	Carbonate of, in bbls. or hhds	4 — 5
57	Chloride of (bleaching powder):	
58	In barrels, boxes, casks or iron drums	3 — 5
59	In pails, with tight covers	3 — 5
60	Medicated, in water-tight packages	3 — 5

§Packages must be plainly labeled "Dangerous if not kept dry." Packages other than those specified *will not be accepted.*

†Necks of carboys surrounded by two and one-half-inch strips, the spaces between the strips not exceeding two and one-half inches, may be considered protected.

‡The right of any of the railway companies adopting this Classification to refuse to receive Bi-sulphide of Carbon, in cans or in glass, boxed, for transportation under any circumstances is reserved.

READ RULES AND CONDITIONS CAREFULLY.

	C	C. L.
	Chemicals and Drugs—Continued.	
	Lime—Continued.	
1	Phosphate of, in bbls. or bxs.	4....5
2	Sulphite of, in bbls. or hhds.	4....5
3	Lime and Sulphur Solution (for dipping cattle): Invoice value not exceeding 6 cents per pound and so receipted for	4....C
4	N. O. S.	3....B
5	Lime Water, in barrels.	3....D
6	Lye, Concentrated Spent, in iron drums	4....5
7	Lye, Powdered or Concentrated, in boxes or barrels	4....5
8	Magnesia, crude, Carbonate of, Oxide of, and Calcined Magnesite, in boxes, bags, barrels or casks	3....5
9	Magnesium Chloride	4....5
10	Manganese, Black Oxide of, in barrels or casks	4....5
11	Medicine Capsules, boxed	1
12	Mercury, Bi-chloride of, bxd.	D 1
13	Naphthalene, including Moth Balls:	
14	In boxes	2
15	In kegs or casks	3
16	In pulp board drums with wooden heads	1 5
17	Opium, NOT TAKEN.	
18	Oxide, Anhydrous, Sulphurous, in copper carboys or drums, completely boxed	1
19	Oxide, Spent (refuse from gas purifying plants)	E
20	Patent or Proprietary Medicines, Liquid, in shipments of one kind only, min. wt. 24,000 lbs.	2
21	Pepsin Preparations	1
22	Phosphorus, taken only in tins hermetically sealed and packed in whiting	D 1
23	Potash:	
24	Bromide of, in boxes, bbls. or kegs	1
25	Caustic, in iron drums, or in tin cans, boxed	4....5
26	Chlorate of, in cans boxed, or in barrels or casks	3....4
27	Chlorate of Potash Tablets, boxed	1
28	Citrate of	1

	C	C. L.
	Chemicals and Drugs—Continued.	
	Potash—Continued.	
29	Cyanide of, in boxes or iron drums	1
30	Iodide of	1
31	Muriate of, in casks or sacks	4....5
32	Prussiate of, boxed	1
33	Sulphate of	1
34	Sulphate of, crude	5
35	Refrigerating Compound, in boxes or barrels	4....5
36	Saltpetre	4....5
37	Salts:	
38	Epsom (sulphate of magnesia):	
39	In boxes, casks or bags	2
40	In tin cans, jacketed	1 5
41	Rochelle, in boxes or kegs	1
42	Silicate Solution (silicate and calcium), in packages	4....5
43	Soda:	
44	Ash, in bbls. or casks	4....5
45	Bicarbonate of, or Saleratus, in boxes, kegs or casks	4....5
46	Bichromate of	3
47	Bi-Sulphite of, in barrels	4....5
48	Carbonate of (Sal Soda), in boxes, bbls., kegs or casks	4....5
49	Carbonating, in boxes, kegs or bbls	4....5
50	Caustic (Concentrated Lye), in tin cans boxed, or in barrels, casks or drums	4....5
51	Caustic Solution, in drums	4....5
52	Hypo-Sulphite of:	
53	In boxes	2
54	In barrels, casks or kegs	4 5
55	Sulphate of (Glauber's Salts), in boxes, barrels or casks	4....5
56	Nitrate of, in boxes, bbls., kegs, casks or sacks	4....5
57	Salt Cake, in bbls. or casks	4....5
58	Silicate of, in barrels, boxes casks or kegs	4
59	Silicate Solution, in drums	4 5
60	Silicate of, in tank cars, (See Rule 33), actual weight per gallon	5
61	Sulphide of, in boxes, bbls. or casks	4....5
62	Sodium:	
63	Peroxide of, in zinc-lined cans	D 1
64	Phosphate:	
65	In casks	4
66	In tin cans, boxed	4 5
67	Sulphite of, in barrels	4....5

READ RULES AND CONDITIONS CAREFULLY.

Chemicals and Drugs—Continued.

1 Boot Cleaning Compound, dry, in boxes or barrels....4....5
2 Strontium Nitrate, boxed....3
3 Sulphate and Hydrate of Alumina:
4 In bags, sacks or barrels....3
5 In bulk.....} 5
6 Sulphur and Sulphur Candles:
7 In boxes or kegs, or in pails with tight wooden covers.2
8 In sacks, barrels or hhds....4 } C
9 Sulphur, in China mats.....4
10 Sulphur Dioxide, in metal drums, min. C. L. wt. 24,000 lbs.....3....4
11 Tanners' Bate.....3....5
12 Tartarine, in iron drums or in wood.....2
13 Tri-Sodium Phosphate, in bbls.3....A
14 Zinc:
15 Chloride of, in barrels, boxes or casks.....4....5
16 Sulphate of.....3
17 Chimneys (earthenware).....4....B
18 China and Japan Goods N. O. S., including Chinese Candles:
19 In cases.....1
20 In baskets.....D 1
21 Chutes, Dehorning Cattle, and Horse Shoeing Suspensory Racks:
22 N. O. S.....1
23 K. D.....3
24 Cigars and Cigarettes:
25 N. O. S., boxed.....D 1
26 In boxes, strapped with wood or iron straps at the ends, and corded in the center; cord to pass in and out through each and every board of the four sides of the box, to be tightly drawn and secured with lead seals.....1
27 In tin packages with wire drawn through sides and ends of top and bottom and sealed.....1
28 In zinc lined boxes; locked, corded and sealed, enclosed in crates and strapped with iron bands.....1
29 Cigar Cutters:
30 Iron, boxed.....2
31 Automatic (not coin operated), boxed.....1
32 Cigar Lighters, including Electric Cigar Lighters, boxed.....1
33 Cigar-Makers' Boards (hardwood), in bundles, boxes or crates....3
34 Cigar Presses:
35 Iron, N. O. S., boxed.....2
36 Wooden, boxed or crated....1
37 Cinders.....E
38 Cinders, Mill:
39 In barrels.....4 } ...D
40 C. L.....
41 Circus Seats (upholstered or with backs):
42 S. U., wrapped or crated....D 1
43 S. U., boxed.....1
44 K. D., in bundles or boxes....2
45 Circus Outfits: Subject to regulations and rates in tariffs of the individual carriers.
46 Cistern Cleaners.....1
47 Cisterns (wooden):
48 S. U.....D 1
49 K. D.....3....D
50 *Clamps, Iron Screw Belt, K. D., boxed.....3
51 Cloak Racks and Hangers, boxed or crated.....2
52 Clocks and Weights, boxed.....1
53 Cloth, asbestos.....1
54 Cloth Frames.....3
55 Cloth Rollers, boxed or crated...1
56 Cloth, Cider Press, in bales.....1
57 Clothes Line Props, crated.....3

58 †Clothing:

59 Clothing, N. O. S., including Corsets, boxed.....1
60 Clothing, N. O. S., in bales, NOT TAKEN.
61 Bonnets, cotton, boxed.....1
62 Bustles:
63 N. O. S., in boxes.....D 1
64 Wire or Steel, and Wire Dress Forms, nested, in boxes..1
65 Clothing (except personal effects):
66 In sample trunks, N. O. S., trunks boxed.....1

†Ratings on Clothing are exclusive of articles of Clothing more specifically provided for (see Fur Garments, Hats, Caps, Bonnets, Boots, Shoes, and Personal Effects), but include Ladies' and Men's Under Garments and Shirts.

Endorsed on cover: File No. 22,374. Oregon C. C. U. S. Term No. 424. The Oregon Railroad & Navigation Company, Appellant, vs. Thomas K. Campbell, Clyde B. Aitchison, Oswald West, and A. M. Crawford. Filed November 1st, 1910. File No. 22,374.

		C	C. L.
	Chemicals and Drugs—Continued.		
1	Soot Cleaning Compound, dry, in boxes or barrels.....4.....	5	
2	Strontium Nitrate, boxed	2	
		C	C. L.
20	Cigar Cutters: Iron, boxed.....	2	
21	Automatic (not coin operated), boxed	4	

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910

No. 753

THE OREGON RAILROAD AND NAVIGATION COMPANY, APPELLANTS,

v.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST AND A. M. CRAWFORD, RESPONDENTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

MOTION BY APPELLANTS AND RESPONDENTS TO ADVANCE CAUSE ON DOCKET

Come now the appellants and respondents above named and move the Court to advance the above entitled cause on the docket, and that the same may be brought on for hearing earlier than in its regular order, and be set down for hearing at the same time as the case of *Shepard* v. *Northern Pacific Railway Company, et al.* (known as the Minnesota rate case), now pending in this Court on appeal from the Circuit Court of the United States for the District of Minnesota, for the Third Division, in which a motion to advance has also been filed. As

grounds for this motion the appellant and respondents respectfully show the Court:

This is a suit in equity brought by the appellant against the respondents in the Circuit Court of the United States for the District of Oregon. The defendants' demurrer to the bill of complaint for want of equity was sustained, whereupon the plaintiff, The Oregon Railroad and Navigation Company, appellant above named, amended its bill of complaint. The defendants below, these respondents, demurred to the bill as amended, and their demurrer was sustained and the bill of the complainant was dismissed. The opinions of the court below are found *sub nom. Oregon Railroad and Navigation Company* v. *Campbell*, 173 Fed. 957, and 178 Fed. 318.

The appellant (plaintiff below) brought its suit to restrain the defendants, Campbell, Aitchison, and West as members of the Railroad Commission of Oregon, and defendant Crawford as Attorney General of the State of Oregon, from enforcing the provisions of the Act of the Legislative Assembly of the State of Oregon (General Laws of Oregon for the year 1907, chapter 53, page 67), in pursuance of which the Railroad Commission of Oregon was created, and particularly to restrain defendants from enforcing a certain order of the said Commission entered April 22, 1908, fixing rates to be charged by appellant for the transportation of freight between Portland, Oregon, and other points within Oregon as hereinafter set forth.

The complainant alleged in its bill (in substance) that it owned and operated a system of railroad lines in Oregon, Washington, and Idaho extending from Portland to Huntington, Oregon, and from Umatilla and Pendleton to Spokane, Washington, and Wallace, Idaho, to-

gether with numerous branch lines extending from the main line of the system, and was engaged in both state and interstate transportation of freight as a common carrier by rail. That the system of railroads of the complainant has physical connection with the Oregon Short Line and Union Pacific Railways, and that these have a like connection with numerous other railroads, and that by reason of these connections and through tariffs published and established by the various companies concerned, merchandise and commodities of all kinds have moved from Chicago, St. Louis, and other points and places east of the Missouri River to Portland and to places east of The Dalles, Oregon, reached by the lines of the complainant; that the Union Pacific Railroad Company, Oregon Short Line Railroad Company and the complainant have issued a tariff covering the transportation of freight from Missouri River common points and other stations in eastern states to various stations on the complainant's line of railway east of The Dalles, Oregon, which tariff was duly filed with the Interstate Commerce Commission and became effective January 2, 1904, and with some amendments was in effect and operation at the time of the filing of the bill. Similar averments are made as to other interstate tariffs in connection with sundry lines of railroad, for the transportation of freight from Pittsburg, Chicago, and Mississippi and Missouri River common points to certain North Pacific coast terminals including Portland, Oregon. It was also alleged that complainant has in effect a tariff of class and commodity freight rates between Portland, East Portland, Albina, St. Johns, Oregon, and all stations on its lines in Oregon, Washington, and Idaho, designated as Tariff L-525, effective January 1,

1907. Also, that certain tariffs are in effect in connection with the San Francisco and Portland Steamship Company and Southern Pacific Company whereby joint rates by water and rail and all rail were established between California points and points in Oregon east of The Dalles, based upon the adding of certain arbitraries or local rates to the rates established by said Tariff L-525 from Portland to various points and places east of The Dalles on the lines of the complainant.

It was alleged that under date of April 22, 1908, the Railroad Commission of Oregon made and entered an order in a proceeding instituted before it by the Portland Chamber of Commerce against the complainant, which order was served upon complainant on April 23, 1908, and was to become effective 20 days thereafter; that in and by said order it was found and charged among other things that the class rates now in effect under Tariff L-525, over and upon the complainant's lines of railway in Oregon between the City of Portland and all points in Oregon east of The Dalles were and are unjust and unreasonably high, and complainant was directed to desist from charging any higher rates for transportation between the points designated than the class rates which were prescribed by the said order, and that in lieu of the said class rates established by said Tariff L-525 the complainant should substitute and adopt the class rates specified in said order, which were less than the rates established by Tariff L-525. It was alleged that of the freight carried from Portland to points on complainant's lines in Oregon east of The Dalles under the class rates fixed by Tariff L-525, at least 40% originates outside of Oregon, has been, is and will be shipped from Portland to points on complainant's

lines east of The Dalles in the same packages in which it was originally shipped from the points of origin to Portland and without coming to rest within the State of Oregon, and without becoming a part of the traffic of the State of Oregon; and that at least 20% of the freight carried, and which will thereafter be carried from Portland over complainant's lines in Oregon east of The Dalles under such class rates has been and will be shipped from Portland to points on complainant's lines east of The Dalles by carriers and persons bringing the same to Portland from points without the State of Oregon with the intention of immediately and without delay shipping the same over complainant's lines from Portland to points in Oregon east of The Dalles; it is also alleged that the order of the Commission in terms applies to all of such freight; that at least 70% of the traffic carried and hereafter to be carried from Portland to points on complainant's lines east of The Dalles in Oregon under rates fixed by Tariff L-525 originates and will originate at points along or east of the Missouri River or in California, and is and will be first transported to Portland and from thence under the class rates of Tariff L-525 or under the class rates fixed by the Railroad Commission of Oregon, and that large quantities of like goods are transported directly from the east to points in Oregon east of The Dalles by complainant and allied lines under the tariffs hereinbefore mentioned whereby it is provided that where the rate from a point of shipment to the North Pacific Terminal added to the local rate under Tariff L-525 from Portland to points east of The Dalles is lower than the through specificially named rate, the combination rate shall govern; and that generally the combination class rates so ascertained are

somewhat less than the class rates established by said tariff, and that the commodity through rates are generally somewhat less than the combination of the transcontinental through rate to Portland and the rate fixed and established by Tariff L-525 from Portland to point of destination east of The Dalles, and are reasonable rates; that generally, such commodity rates so fixed by the said Union Pacific and other railroads in the tariff first mentioned are greater than the combination of the rate fixed by the transcontinental terminal tariff from the point of shipment to Portland and the rates undertaken to be established by the Railroad Commission of Oregon aforesaid from Portland to points east of The Dalles. That should the said order become effective it would affect not only the interstate rates specifically mentioned but each and every other interstate rate now in force and effect from Missouri River common points and points east thereof to points in Oregon east of The Dalles, and from points in California to like points in Oregon; and that the said order of the said Railroad Commission necessarily and directly amounts to an attempt to regulate the commerce between the several states. That should the complainant attempt to comply with the order, it would be compelled to violate the act of Congress entitled "An Act to regulate Commerce" and the regulations of the Interstate Commerce Commission, and that in this particular said order is an attempt to regulate interstate commerce and is void.

It was also alleged in the bill that the rates established by said Tariff L-525 were reasonable rates and that the rates attempted to be established by the order were unreasonably low and unjust to complainant and operated to confiscate property of complainant and deprive it of property without due process of law.

It was further charged in the bill that no adequate or proper remedy was afforded for the protection of complainant against the alleged injustice of tariff fixed by the order of said Commission, and that the penalties prescribed for the violation of the order were so severe and drastic as to render it confiscatory to attempt to litigate against an order or to maintain its rights and have reasonable rates established affecting such traffic upon local lines, and that therefore the complainant was deprived of property without due process of law and is denied the equal protection of the laws.

It was further alleged that the act of the Legislative Assembly of the State of Oregon creating said Railroad Commission is unconstitutional in that it attempts to award to said Commission all the powers of government, namely legislative, executive and judicial.

The bill includes the usual jurisdiction averments, and that the defendants, members of said Commission and Attorney General, are threatening to put the tariff established by the said Commission into effect and to prosecute complainants for any disregard of its amendments thereof.

That there are now pending in the Circuit Court of the United States for the District of Oregon other suits in equity brought by other complainants than the appellant herein against these defendants in their official capacity raising the same general issues of law, and that the decision of this cause by this honorable court will necessarily conclude the litigation now pending in the said Circuit Court. The questions presented respecting the right of the State of Oregon to regulate commerce carried on over the lines of appellant and other common

carriers within said State, under circumstances such as disclosed by the bill of complaint herein, are of extreme importance, not alone to the State of Oregon and the common carriers immediately affected, but to every other state and every common carrier within the United States. The issues presented by the said bill of complaint are in large part necessarily included in and are to be determined by the decision by this court in what are known as the "Minnesota Rate Cases" now pending on appeal in this court as hereinbefore in this motion set forth; that this case was docketed in the Supreme Court of the United States on October 1, 1910, and naturally would take precedence over the Minnesota rate cases, which have been docketed only a few days prior to the filing of this motion.

Appellant and respondents are informed that a motion will be presented to this honorable court asking that the said Minnesota rate cases be advanced upon the docket. It is respectfully suggested that in event said motion is granted this cause be set down for hearing at the same time, to the end that the parties hereto may be fully heard at the same time a hearing is had upon the Minnesota rate cases. Appellant and respondents herein submit to the court that a speedy and final determination of the constitutional questions presented by this cause is of great importance to the various states, the railroads doing business within their boundaries and the shipping public, and that on account of the public nature of the

question presented this cause should be advanced upon the docket for hearing.

Respectfully submitted,

W. W. COTTON,

JAMES G. WILSON,

Attorneys for Appellant.

A. M. CRAWFORD,

Attorney General of the State of Oregon.

JOSEPH N. TEAL,

CLYDE B. AITCHISON,

Attorneys for Respondents.

United States of America,
State of Oregon,
County of Multnomah. } *ss.*

I, Clyde B. Aitchison, being duly sworn, on my oath depose and say that I am one of the defendants and respondents to this action and am Chairman of the Railroad Commission of Oregon mentioned in the aforegoing motion; that I have read the same, and that the matters and things therein set forth are true.

CLYDE B. AITCHISON.

Subscribed in my presence and sworn to before me by the said Clyde B. Aitchison, this 8th day of May, 1911.

JAMES G. WILSON,

[SEAL.] *Notary Public for Oregon.*

United States of America,
State of Oregon,
County of Multnomah. } ss.

I, W. W. Cotton, being first duly sworn, on my oath depose and say that I am Assistant Secretary of the Oregon Railroad and Navigation Company, appellant herein, that I have read the foregoing motion, and that the matters and things therein set forth are true.

W. W. COTTON.

Subscribed in my presence and sworn to before me by the said W. W. Cotton, this 8th day of May, 1911.

JAMES G. WILSON,

[SEAL.] *Notary Public for Oregon.*

Supreme Court, U. S.
FILED.
FEB 7 1912
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 159.

THE OREGON RAILROAD AND NAVIGATION COMPANY, a corporation,
Appellant,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR APPELLANT.

W. W. COTTON,
MAXWELL EVARTS,
Of Counsel for Appellant.

C. G. BURGOYNE, 72 to 78 Spring Street, New York.

Supreme Court of the United States,

OCTOBER TERM, 1911.

No. 424.

THE OREGON RAILROAD AND NAVIGATION COMPANY, a corporation,

Appellant,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST and A. M. CRAWFORD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR APPELLANT.

Statement.

The appellant is a railroad corporation, doing business within the States of Oregon, Washington and Idaho (Record, p. 2). Defendant A. M.

Crawford is Attorney-General of the State of Oregon, and defendants Campbell, Aitchison and West constitute the Railroad Commission of the State of Oregon, acting as such under an act of the legislative assembly of the State of Oregon adopted in 1907, copy of which is Exhibit "A" to the bill (Record, page 111).

On April 22, 1908, the Railroad Commission, in a proceeding by the Portland Chamber of Commerce against the appellant, found and declared that the class rates then in effect under appellant's freight tariff No. L-525, I. C. C. 1146, between Portland and all points within the State of Oregon east of The Dalles, were unjust and unreasonably high, and prescribed certain lower rates to be charged by appellant in lieu of the class rates fixed by Tariff L-525. Before the effective date of the order appellant filed its bill in the Circuit Court. By this bill the appellant sought to obtain an injunction restraining the enforcement of the order and the establishment of the rates named therein upon various grounds, and particularly upon the ground that the order and the rates named therein would have the effect of regulating interstate commerce and the course of transportation thereof (Record, pp. 2–30).

The defendants demurred to the bill on the grounds, that the court had no jurisdiction of the subject-matter of the controversy and that the bill did not state such a case as to entitle the appellant to the relief sought (Record, p. 25). The defendants also filed demurrers to separate portions of the bill (Record, p. 36). The Circuit Court held that the court had jurisdiction of the subject-matter of the controversy but that the bill did not entitle the appellant to the relief sought (Opinion, Record, p. 39; 173 Fed., 957). Afterward, the appellant by leave of court filed an amendment to the bill (Record, pp. 77–80), and to this amendment and to the bill as amended the defendants again demurred on the same grounds (Record, pp. 81–85). A hearing was had upon the demurrers to the bill as amended; the demurrers were sustained, and the amended bill was dismissed (Opinion, Record, p. 86; 177 Fed., 318). The restraining order theretofore issued was vacated and annulled (Record, p. 89).

The manner in which the order of the Commission affects and regulates interstate commerce is alleged in paragraphs VII to XXIV, inclusive (Record, pp. 5–19) of the original bill, and by the amendment (Record, p. 71). The

facts alleged will be stated substantially in the language of the bill and of the amendment.

The appellant, The Oregon Railroad and Navigation Company, is a corporation organized under the laws of the State of Oregon, and owns a line of railroad in the States of Oregon, Washington and Idaho extending from Portland, Oregon, to Huntington, Oregon, and from Umatilla, Oregon, and Pendleton, Oregon, to Spokane, Washington, and Wallace, Idaho, together with various branch lines of railroad in said States. The principal business of the appellant consists of interstate commerce, and its carrying of such commerce is subject to the sole and exclusive control of Congress. Of the total business of the appellant less than twenty per cent is local within the State of Oregon (Bill, par. I., Record, p. 2). At Huntington, Oregon, the line of railroad of the appellant connects with the line of railroad owned and operated by the Oregon Short Line Railroad Company, extending from Huntington to Granger, Wyoming, and there connecting with the line of the Union Pacific Railroad Company. The line of the Union Pacific Railroad Company extends to Council Bluffs, Iowa, and there connects with various lines of railroad extending to all points

and places in the United States east of the Missouri River (Bill, par. VII., Record, p. 5). The Northern Pacific Railway Company owns and operates a line of railroad from Portland, Oregon, to St. Paul, Minnesota, where said line has a physical connection with various lines of railroad extending to Chicago, Illinois, and other points east of Missouri River. The Northern Pacific Railway Company and its connections are engaged as common carriers in the transportation of large quantities of freight from such eastern points to Portland, and from Portland to such eastern points (Bill, par. XXIII, Record, p. 16). The Southern Pacific Company is engaged in operating a line of railroad extending from San Francisco, California, to Portland, Oregon, and there having physical connection with the railroad of the appellant (Bill, par. XIII, Record, p. 8). The San Francisco and Portland Steamship Company is a corporation operating a line of steamships upon the Pacific Ocean engaged in the transportation of freight between San Francisco and Portland, and said steamship company and appellant constitute a through route, under a common management and control, and make through rates, from San Francisco to

points on appellant's lines east of The Dalles (Bill, par. XII, Record, p. 8).

Effective January 1, 1907, the appellant duly published and filed with the Interstate Commerce Commission and with the Railroad Commission of Oregon, a freight tariff naming class and commodity rates based upon the Western Classification between Portland, East Portland, Albina and St. Johns, and all points and stations on the line of the appellant in Oregon, Washton and Idaho. Said tariff was numbered as follows: No. L-525, O. R. C., No. 39, I. C. C., 1146, and will hereafter for convenience be referred to as L-525. A copy of said tariff marked Exhibit "H" is attached to and made a part of the bill, together with various supplements which from time to time, have been duly published and filed with the Interstate Commerce Commission and with the Railroad Commission of the State of Oregon. From the time of said publication and filing of said rates, said rates were the only rates which the appellant was authorized to charge for the transportation of freight described in said tariff between Portland, East Portland, Albina and St. Johns and various points in Oregon, Washington and Idaho east of The Dalles, Oregon, and were reasonable rates (Bill par. XI, Record, p. 7).

The Western Classification is attached to the bill of complaint and made a part thereof, marked Exhibit "M" (Record, p. 16), and a portion of said classification is printed in the Record commencing at page 217. By reference to the index to this classification (Record, page 222), it will be seen that the classification relates to every recognized article of commerce, and that to each of these articles, in carloads or less than carloads, is assigned one of the ten classes of rates established by the Western Classification and in use upon the lines of the appellant, and the various connecting lines whose names appear in the classification commencing on page 218 of the Record. An inspection of this classification shows that few of the articles mentioned in the classification are produced in the State of Oregon, and paragraph XV of the Bill (Record, p. 10) alleges as follows:

> "At least seventy per cent. of the freight carried, and which will hereafter be carried from Portland to points on your orator's lines in Oregon east of The Dalles, under the class rates established and fixed by tariff No. L-525, originates, and will originate, at points along, or east of, the

Missouri River, or in California, and was and will be first transported from said eastern points, or from California, to Portland, before it is, or will be, transported from Portland, under the class rates established by tariff No. L-525, or under the class rates undertaken to be established by said pretended order of the said Railroad Commission of Oregon, and large quantities of like kind of freight are transported directly from the east to points in Oregon, east of The Dalles, by your orator and the lines connecting therewith, at and under the rates fixed by Union Pacific tariff I. C. C. No. 1578, and are transported from points in California to points in Oregon east of The Dalles by your orator and the San Francisco & Portland Steamship Company, and by your orator and the Southern Pacific Company, at the rates fixed and established by the tariffs in force from California to points east of The Dalles, as hereinbefore alleged."

The amendment to the Bill of Complaint (Record, p. 77) alleges that at least forty per cent of the freight carried under the class rates established by the tariff, L-525, "will be shipped from Portland to points on your orator's line east of The Dalles in the same packages in which it was originally shipped from the point of origin

outside of the State of Oregon to Portland without coming to rest within the State of Oregon and without becoming a part of the traffic of the State of Oregon"; and that at least twenty per cent. of the freight so carried "has been and will be shipped from Portland to points on your orator's lines in Oregon east of The Dalles by carriers and persons bringing the same to Portland from points without the State of Oregon with the intention of immediately and without delay shipping the same over the lines of your orator from Portland to points in Oregon east of The Dalles."

Section 6 of the Act to Regulate Commerce, as amended (34 Stats. at Large, p. 586) requires that every common carrier, subject to the provisions of the act, shall file with the Interstate Commerce Commission all rates for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, when through route and joint rates have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates applied to the through

transportation. The charging of any greater, or less, or different compensation than the rates specified in the tariff is made a misdemeanor. The same section provides that no change shall be made in the rates filed and published by any common carrier, in compliance with this section, except after thirty days' notice to the Commission and to the public, plainly stating the changes proposed to be made.

As a result of the filing of tariff L-525 with the Interstate Commerce Commission and making it applicable to interstate commerce, Section 6 of the Interstate Commerce Act above referred to made the rates so established the only lawful rates which the appellant could charge with respect to interstate commerce moving between Portland and any point on the lines of the appellant in Oregon, Washington or Idaho, unless such commerce moved under some lawfully established through rate, and such rates could not be changed by the appellant without giving thirty days' notice, and by the publishing and filing of a new tariff.

The Railroad Commission by its order (Record, p. 183) finds:

"That the class rates now in effect under

defendant's freight tariff effective January 1, No. L-525, O. R. C., No. 39, I. C. C. No. 1146, with supplements amendatory thereof, over and on said defendant company's main, branch, leased and otherwise controlled railroad lines within the State of Oregon, between the city of Portland and all points within said State on said lines of railroad east of the city of The Dalles in said State, are unjust and unreasonably high. Said tariff is based on existing Western Classification. That the defendant has established class rates between Portland and branch line points which generally are the same or lower for equal distance on the main line.

"That between the city of Portland, Oregon, and all points east of The Dalles, except where, under said tariff, the rates are now the same or less than are prescribed herein, the first class rates now in effect under said tariff should be reduced by an amount equal to one-sixth of the difference between twenty-five cents (the existing first-class rate to The Dalles), and the existing first-class rate to such point; and that all other class rates between Portland and points east of The Dalles, with the exception above noted, should be reduced and bear the same relation to the

first-class rate as is provided in the distance tariff of said defendant company, to wit:

Classes.	1	2	3	4	5	A	B	C	D	E
Per cent of first-class:	100	85	70	60	50	50	40	30	25	20

The rates on branch lines to be the same as on the main line for equal mileage. And that such rates are hereby determined to be just and reasonable rates for the transportation of the property and commodities covered by said tariff under said classes; and that present rates between Portland and any point in the State of Oregon under said tariff should not be exceeded on any class."

As a result of these findings the Commission ordered (Record, p. 183):

"The Oregon Railroad and Navigation Company shall cease and desist from charging any higher rates within this State for the transportation of merchandise and other commodities between the city of Portland and points on the defendant company's main, branch, leased or otherwise controlled railroad lines within the State of Oregon covered by the class rates in said tariff No. L-525, O. R. C. No. 39, I. C. C. No. 1146, than the class rates prescribed in this order, and that said railroad company, in lieu of the rates

herein ordered discontinued, shall substitute the following maximum rates:

"Reduce first class rates (under present Western Classification) between Portland and all points east of The Dalles (except where, under the existing tariff, the rates are now less than prescribed herein) by an amount equal to one-sixth of the difference between twenty-five cents (the existing first class rate to The Dalles) and the existing first class rate to such point, and reduce all other class rates between Portland and points east of The Dalles, with the exception above noted, so that they will bear the same relation to the first class rate as is provided in the distance tariff of said defendant railroad company, to wit:

	1	2	3	4	5	A	B	C	D	E
Per cent of first class:	100	85	70	60	50	50	40	30	25	20

The defendant shall apply such rates to the supplements to and reissues of the present Western Classification.

"It is further ordered, considered and determined that the rates under the existing tariff shall not be exceeded on any class between any points covered by said tariff nor apply to or change any rate now in effect that is lower than the rates prescribed by this order; provided, the rates

herein ordered may equal the present rates between Portland and The Dalles when the application of the formula herein prescribed would reduce the rates below the said present rates between Portland and The Dalles.

"When the application of the formula produces a remainder of one half cent or greater fraction the company shall be entitled to charge the whole cent and when less than one half cent the same shall be dropped."

The appellant insists that the order of the Commission is a direct prohibition against the application by the appellant of the rates established by tariff L-525 to the interstate commerce which formerly moved under such tariff, and that therefore the order of the Commission is a regulation of interstate commerce.

When this question was presented to the court below the view was taken that the order should be construed as applicable only to intrastate commerce, and that any questions as to whether any particular shipment or any particular commodity was intrastate commerce could be determined in the special cases as they arose, and that "it is impossible by a general decree to determine in advance what specific commodities and the

transportation thereof constitute interstate and what intrastate commerce" (Record, p. 88). This part of the opinion clearly ignores the allegation of the amendment to the Bill to the effect that at least forty per cent. of the traffic moving under tariff L-525 was interstate commerce.

Immediately upon the dismissal of the bill claims were presented against the bond given by the appellant at the time of obtaining the restraining order, and three of these claims were presented to the court by the petition in intervention of W. S. Smallwood (Record, page 90). The court held (Record, p. 96; 180 Fed., 253) that all traffic shipped locally between Portland and points in eastern Oregon was, from a rate standpoint, intrastate commerce, notwithstanding the fact that such traffic in the hands of the owner might be interstate commerce for every other purpose. Upon this point the court said (Record, p. 99).

> "Transportation from a point in one State to a point in another is undoubtedly interstate commerce. But, says the court in *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403, 409:
>
> "'When the commodity transported has reached the termination of its journey and

has been delivered to the consignee, it ceases to be a subject of interstate commerce, and the subsequent shipment from the point at which it has been delivered to another point in the State, is an intrastate shipment.'

"The case turns upon the contract of shipment between the shipper and carrier, and when that is at an end, the shipper can claim nothing further as it respects the property carried. It is then at the command of the owner, and if he chooses to ship it again from one point to another in the State, it becomes an intrastate shipment, notwithstanding the owner may be dealing with an article of interstate commerce. For illustration, take the case of *Leisy v. Hardin*, *supra*; where beer was shipped into Iowa in original packages, the owner could not be deprived of the right to sell the beer, while it remained in original packages because it was an article of interstate commerce. The shipment of the beer to him from another State was an interstate shipment. When that shipment was at an end, another carrier, who might transport the beer to another point in the State of Iowa, could not claim that the shipment was interstate because the article might be characterized interstate commerce in the hands of the owner. There must be, and is, a distinction between interstate com-

merce as it pertains to the article and interstate commerce as it pertains to transportation and carriage. The former depends upon the fact that it is an article of commerce, that is, of barter and sale, between the States or with foreign countries, and the latter upon the fact that it is being transported from one State into another. When the transportation ceases or comes to an end, the shipment has lost its character as an interstate shipment, and if the commodity is again moved it becomes an intrastate or interstate shipment according as it is moved to a point wholly within the State or a point without."

In connection with the above statement of the court attention is called to the fact that the quotation made apparently from the opinion of this Court is taken from the reporter's abstract of the brief filed by the Attorney General of the State of Texas and found, as indicated, on page 409 of the report.

The bill alleges and shows that no matter what may be the character of commerce moving between Portland and points in eastern Oregon, the rates between Portland and points in eastern Oregon are so related to rates upon commerce moving into eastern Oregon from California

and points east of Missouri River that any regulation of the rates between Portland and eastern Oregon points directly regulates the rates on such interstate commerce and the course of transportation thereof.

Upon this proposition the Circuit Court, as the result of all the opinions rendered, held:

First, that the State has sole, exclusive and supreme power to regulate the rates upon intrastate commerce;

Second, that all commerce shipped locally on appellant's line between Portland and points in eastern Oregon is, for the purpose of rate regulation, intrastate commerce, and therefore subject to the sole, absolute and supreme power of the State;

Third, that if regulation by the State of the rates on traffic shipped locally between Portland and points in eastern Oregon has any effect upon interstate rates, or the movement of commerce between the States, or the transportation of such commerce, such effect cannot be allowed to interfere in any way whatsoever with the supreme power of the State to regulate the rates upon such commerce.

The court says in its first opinion (Record, p. 69):

> "So, if it be that the local State rates, as fixed and regulated by the State Railroad Commission on these commodities, unsettle in some way previously fixed transcontinental or interstate rates, that circumstance does not render the State rates invalid as an interference with interstate commerce."

Under the decisions of this Court the State of Oregon cannot, by any attempted regulation of intrastate commerce, burden interstate commerce, regulate the rates thereon, or change the course of transportation thereof. The decisive question, therefore, is,—does the order of the Commission substantially burden, affect or regulate interstate commerce?

In order to determine this question the adjustment of rates in the northwest must be considered, and the facts regarding this adjustment are alleged in the bill.

By section 6 of the Act to Regulate Commerce, and the amendments thereto (34 Stats. at Large, 586), if no joint rate over any through route has been established the several carriers in such through route shall file, print and keep open to public inspection the separately established rates, fares and charges applied to the through transportation. By filing tariff L-525 with the

Interstate Commerce Commission the appellant made the rates therein named between Portland and points in eastern Oregon applicable to interstate commerce and subject to be used by any carrier connecting with the line of the appellant at Portland, in naming rates from points without the State of Oregon to points in eastern Oregon (*In re Through Routes and Through Rates*, 13 I. C. R., 163). Thus, for example, a shipment originating on the Northern Pacific in the western part of Washington, moving on through-billing to a point in eastern Oregon, would take the duly established rate of the Northern Pacific to Portland plus the rate of the appellant from Portland to eastern Oregon shown by tariff L-525. Under the Interstate Commerce Act and the rulings of the Interstate Commerce Commission thereunder, the above combination would be the only lawful rate which could be charged upon such shipment.

The appellant and its various connecting carriers published a tariff, in which a large number of railroad companies concurred, naming class and commodity rates from New York and common points, from Philadelphia and common points, from Cincinnati and common points, from Chicago and common points, from Missis-

sippi River common points and from Missouri River common points to certain north Pacific coast terminals, including Portland, Oregon, and duly filed said tariff with the Interstate Commerce Commission. Said tariff names rates to no point or place on the lines of the appellant east of Montavilla, Oregon. This tariff, for convenience, will be referred to hereafter as the Transcontinental Terminal Tariff (Bill, par. IX, Record p. 6). The Northern Pacific Railway Company, operating between Portland and all points east, is a party to the Transcontinental Terminal Tariff, and, as a result, makes the same rates from any eastern point to Portland as the rates made by appellant and its connections (Bill, par. XXIII, Record p. 16).

The appellant and its connections and the Northern Pacific Railway Company and its connections, published and filed with the Interstate Commerce Commission a tariff on wool, designated in the bill as Exhibit "J" being I. C. C. No. 812, from Portland to Boston, Philadelphia and New York, establishing a rate of $1.00 per cwt. (Bill, par. XXIV, Record, p. 17).

The rates fixed and established by the Transcontinental Terminal Tariff and by the wool Tariff I. C. C. No. 812 are very low, and

are less than reasonable rates for the service performed, and are made so low solely because of the fact that freight covered by said tariffs is, and can be, transported from New York and other eastern points to Portland, by carriers operating vessels on the ocean (Bill, pars. XXIII and XXIV, Record, pp. 16 and 17).

The appellant and its connections published a tariff and filed the same with the Interstate Commerce Commission covering the transportation of freight between Chicago and various eastern points, and various stations in Oregon on the lines of the appellant east of The Dalles. This tariff is attached to the bill and marked Exhibit "B," and will hereafter be referred to as Union Pacific Tariff I. C. C. No. 1578 (Bill, par. VIII, Record, p. 6). As the result of water competition the rates fixed by Union Pacific Tariff I. C. C. No. 1578 to eastern Oregon points are higher than the rates to Portland. In order to avoid the unjust discrimination possibly occurring through the fixing of rates by Union Pacific Tariff I. C. C. No. 1578 higher than the combination of the Transcontinental Terminal Tariff rate and the local back from Portland to destination, it is provided in Union Pacific Tariff I. C. C. No. 1578 that

where the Transcontinental Terminal Tariff rate to Portland added to the local rate from Portland to any point in eastern Oregon established by tariff L–525, is a lower rate to the same point than is shown by Union Pacific Tariff I. C. C. No. 1578, then the combination of the Transcontinental Terminal Tariff rate and the rate fixed by tariff L–525 shall govern. (Bill, par. XV, Record, p. 10.)

The appellant, in connection with the Oregon Short Line Railroad Company and the Union Pacific Railroad Company, and the various lines connected therewith, duly published and filed with the Interstate Commerce Commission a tariff on wool from various points on the line of the appellant east of The Dalles to Boston, Philadelphia, New York and other eastern points. This tariff is designated in the bill as Exhibit "K", and bears number I. C. C. No. 1177. The wool tariffs mentioned herein are based upon the Western Classification, and wool under the Western Classification takes the third class rate. The wool rates established by Exhibit "K" are equal to, or less, than the combination of the third class rate fixed and established by tariff L–525 from eastern Oregon points to Portland, and the rate of

$1.00 established from Portland to Boston, Philadelphia and New York by Exhibit "J". (Bill, par. XXIV, Record, p. 17.)

In connection with the San Francisco and Portland Steamship Company, and in connection with the Southern Pacific Company, the appellant has established through rates from San Francisco to various points in eastern Oregon, and such rates consist mainly of a combination of the rates fixed by tariff L-525 from Portland and certain arbitraries or local rates, and such rates so established are filed with the Interstate Commerce Commission and are reasonable rates (Bill, pars. XII and XIII, Record, p. 8).

Under the decision of the court below any person having freight originating at any point or place outside of Oregon could have offered the same at Portland for transportation to an eastern Oregon point, and the appellant would have been compelled to receive such freight and transport it to destination at the rates fixed by the Commission order. Obedience, therefore, to the order of the Commission produced the following results directly affecting the interstate commerce, the rates thereon and the course of transportation thereof :

(1) A lower scale of class rates was established between Portland and points in eastern Oregon than appellant had established under tariff L-525 between Portland and Washington points, or than appellant could establish for a period of thirty days to or from Washington points without the permission of the Interstate Commerce Commission;

(2) A combination of the Commission order rates and the rates of the Northern Pacific Railway Company to Portland from western Washington points was less in all instances than the combination of the same rates of the Northern Pacific Railway Company and the rates established by tariff L-525;

(3) The combination of the Transcontinental Terminal Tariff rates to Portland and the Commission order rates to all eastern Oregon points was less than the direct rates established by Union Pacific Tariff I. C. C. No. 1578. This is alleged and illustrated in paragraph XVI of the Bill (Record, p. 11);

(4) The combination of the local rates from San Francisco to Portland and the Commission order rates from Portland to eastern Oregon points, is less than the direct through rates from San Francisco to eastern Oregon points estab-

lished by the tariffs mentioned in paragraphs XII and XIII of the Bill (Record, p. 8). This is alleged and illustrated in paragraph XVII of the Bill (Record, p. 11);

(5) The combination of the rates on wool from Portland established by Exhibit "J" and the Commission order rates from eastern Oregon points to Portland was less than the rates from eastern Oregon points to eastern destination established by Exhibit "K." This is alleged and illustrated in paragraph XXIV of the Bill (Record, p. 19).

Each of the foregoing matters constitutes an unjust discrimination against interstate commerce shipped directly from the point of origin to the point of destination, and such unjust discrimination could be corrected, if the Commission order is allowed to stand, only by a change in the interstate rates of the appellant and its connections, and if such unjust discrimination was not corrected by a change in rates then the discrimination would stop the direct transportation of interstate commerce between points of origin and eastern Oregon points and force such commerce to be first transported to Portland and then reshipped locally from Portland to destination.

Assignment of Errors.

1. That the court below erred in sustaining the joint and several demurrers of the defendants to the appellant's original bill of complaint;

2. That the court below erred in sustaining the joint and several demurrers of the defendants to the amendment to the bill of complaint;

3. That the court below erred in sustaining the joint and several demurrers of the defendants to the amended bill of complaint of the appellants;

4. That the court below erred in holding and deciding that the order of the Railroad Commission of Oregon, establishing the rates sought to be enjoined, was not a regulation of interstate commerce, and was not a violation nor in contravention of the provision of the Constitution of the United States to the effect that Congress shall have power to regulate commerce with foreign nations and among the several states.

ARGUMENT.

I.

Any attempted regulation by the State of intrastate transportation rates which necessarily affects and regulates rates upon interstate traffic or the movement of such traffic, is an unconstitutional interference with interstate commerce.

Eliminating for the moment any question of the character of commerce shipped locally between Portland and points in eastern Oregon, the appellant insists that the power of the State is not supreme and absolute over such commerce and the rates for its transportation and that any and all power which the State exercises over such commerce and rates therefor, must be exercised in subordination to the supreme and absolute power of the National Government to regulate commerce between the States and that no action can be taken by the State with respect to such commerce or the rates applicable thereto which will in any way directly affect the rates upon interstate commerce or the course of traffic or the manner of transportation thereof.

The power of Congress to regulate interstate commerce is supreme and exclusive. If the power of Congress to regulate commerce cannot

be effectually exercised without affecting intrastate commerce, then Congress may regulate intrastate commerce so far as necessary in order to regulate interstate commerce fully and effectually, and if the power of the Federal Government to regulate interstate commerce and the attempted exercise by a State of its power to regulate intrastate commerce conflict, the former must prevail and the latter must give way because the constitution and the acts passed in pursuance thereof are the supreme law of the land.

Southern Railway Co. vs. The United States, 222 U. S., 20.
Southern Railway Co. vs. Reid (Decided by this Court Jan. 9, 1912).
Mondou vs. New York, New Haven & Hartford Railroad Co. (Decided by this Court Jan. 15, 1912).
Western Union Telegraph Co. vs. Kansas, 216 U. S., 1.
West vs. Kansas Natural Gas Co., 221 U. S., 229.

In *Western Union Telegraph Co. vs. Kansas*, 216 U. S., 1, Mr. Justice HARLAN says, at p. 37:

> " We cannot fail to recognize the intimate connection which, at this day, exists between the interstate business done by interstate companies and the local business

which, for the convenience of the people, must be done or can generally be better and more economically done by such interstate companies rather than by domestic companies organized to conduct only local business. It is of the last importance that the freedom of interstate commerce shall not be trammelled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States. While the general right of the States to regulate their strictly domestic affairs is fundamental in our constitutional system and vital to the integrity and permanence of that system, that right must always be exerted in subordination to the granted or enumerated powers of the General Government, and not in hostility to rights secured by the supreme law of the land."

In *West vs. Kansas Natural Gas Company*, 221 U. S., 229, Mr. Justice McKENNA says, at page 260:

"At this late day it is not necessary to cite cases to show that the right to engage in interstate commerce is not the gift of a State, and that it cannot be regulated or restrained by a State, or that a State cannot exclude from its limits a corporation engaged in such commerce. To attain these un-

authorized ends is the purpose of the Oklahoma statute. The State, through the statute, seeks in every way to accomplish these ends, and all the powers that a State is conceived to possess are exerted and all the limitations upon such powers are attempted to be circumvented. Corporate persons are more subject to control than natural persons. The business is therefore confined to the former, and foreign corporations are excluded from the State. Lest they might enter by the superior power of the Constitution of the United States, the use of the highways is forbidden to them and the right of eminent domain is withheld from them, and the prohibitive strength which these provisions are supposed to carry is exhibited in the fact that the boundary of the State is a highway. * * *

"The inaction of Congress is a declaration of freedom from State interference with the transportation of articles of legitimate interstate commerce. * * *

"'No State by the exercise of, or by the refusal to exercise, any or all of its powers, may substantially discriminate against or directly regulate interstate commerce or the right to carry it on.'"

The State in attempting to regulate rates on intrastate traffic can take no action which will

directly regulate rates upon interstate traffic or affect the movement of such traffic.

Wabash, &c., Ry. Co. vs. Illinois, 118 U. S., 557.
Louisville & Nashville Ry. Co. vs. Eubank, 184 U. S., 27.

In *Wabash, &c., Ry. Co. vs. Illinois*, 118 U. S., 557, Mr. Justice MILLER, after a review of the authorities, says (p. 575):

> "We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a State which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the States, is a valid law."

In *Louisville and Nashville Ry. Co. vs. Eubank*, 184 U. S., 27, the railroad company made a charge of 12 cents per 100 pounds for the transportation of tobacco from Nashville, Tennesssee to Louisville, Kentucky. The railroad company alleged that this rate was extremely low, made necessary in order to enable the company to meet competition of boats plying between Nashville and Louisville. From Frank-

lin, Kentucky, a place intermediate between Nashville and Louisville, the company transported tobacco to Louisville, at the rate of 25 cents per 100 pounds. At the time these rates existed Section 216 of the Constitution of Kentucky prohibited the charging of a greater rate for a shorter than a longer distance over the same line in the same direction. The Supreme Court of Kentucky held that this constitutional provision was violated by the rate adjustment referred to. This Court held that the constitutional provision as construed was void. In disposing of the question involved, Mr. Justice PECKHAM, page 40, said:

> " Is it an answer to this statement to say that the company can get this business by lowering its rates within the State to the same rate as charged from Nashville? Is it bound, in order to secure this interstate commerce, to lower its rates all through the State? If it be, is not the law which accomplishes this result a direct interference by the State with interstate commerce? And if it do not lower its State rates and in consequence must raise its interstate rates, in order to make its State rates valid, and thus must lose to an appreciable and important extent the interstate commerce, is not a law

from which such necessary and direct consequences result a regulation in effect by the State, of that commerce which ought to be free therefrom?"

On page 41 it is said:

"The facts in this case have been thus fully referred to for the purpose of showing how directly and also how injuriously such a provision might affect interstate commerce. Other cases may be supposed, where the effect might not be so oppressive. But the fact which vitiates the provision is that it compels the carrier to regulate, adjust or fix his interstate rates with some reference at least to his rates within the State, thus enabling the State by constitutional provision or by legislation to directly affect, and in that way to regulate, to some extent, the interstate commerce of the carrier, which power of regulation the Constitution of the United States gives to the Federal Congress.

* * * * *

"It seems also to be thought that there is no regulation of commerce, provided it is not interfered with or regulated in all ways by which transportation of commodities between interstate localities may be accomplished; that if the commodity (tobacco in this case) can be transported by any other means or

route, or by any other individual or corporation than the one affected by the regulation, commerce is not regulated within the constitutional meaning. On the contrary, it seems quite clear that any law which in its direct result regulates the interstate transportation of a single individual carrier, or a company of carriers, violates the provision in question; that it is no answer to say the commodity can still be transported by another carrier or by water instead of rail, so long as the direct effect of the State legislation is to regulate the transportation of the commodity by a particular means, by rail instead of by water, or by a particular individual or company."

II.

Interstate commerce, reshipped in original packages, moved between Portland and points in eastern Oregon under tariff No. L-525, and the order of the Commission prohibits the application of said tariff thereto.

In paragraph XV (Record, p. 10) it is alleged that at least seventy per cent. of the freight carried from Portland to points in Oregon east of The Dalles under the class rates established

and fixed by tariff L-525 originates and will originate at points along or east of Missouri River or in California. The amendment (Record, p. 77) alleges that at least forty per cent. of such freight is shipped out of Portland in original packages and without coming to rest within the State of Oregon and without becoming part of the traffic of the State of Oregon, and at least twenty per cent. is shipped from Portland to points in Oregon east of The Dalles by carriers and persons bringing the same to Portland from points without the State of Oregon with the intention of immediately and without delay shipping the same over the lines of the appellant to destination. The order of the Commission prohibits the charging of the rates fixed by tariff L-525 upon any of such traffic. Is any of such traffic interstate commerce?

Constrained apparently by the case of *Gulf, Colorado and Santa Fe Railroad Company vs. Texas*, 204 U. S., 403, the court held that while such traffic might be the subject of interstate commerce and therefore free from any State prohibition against sale or movement, nevertheless, from a transportation standpoint, it was intrastate commerce and subject to rate regulation by the State (Record, p. 99).

The appellant concedes that after rates are put into effect between Portland and points in eastern Oregon the shipper of any kind of merchandise is entitled to avail himself of such rates and have his commerce transported to Portland and there reshipped to an Oregon destination under such rates, but the appellant insists that while the reshipment would be intrastate the commerce, if actually moving from a point without the State of Oregon, would be interstate commerce and that, therefore, the appellant has a right to resist putting into effect rates between Portland and points in Oregon applicable to such commerce, and thus prevent shippers from availing themselves of State made rates in the movement of interstate commerce.

In *Gulf, Colorado and Santa Fe Railroad Company vs. Texas*, 204 U. S., 403, the rates were already established and the railroad company was undertaking to resist application of the rates to a movement to which the rates in terms applied. The sole and only question, therefore, involved in that case was, whether the shipment was one to which the rates did apply, and nowhere throughout the opinion is the expression "intrastate commerce" used. The power of the

State of Texas to establish such rates was not challenged.

Traffic which commences to move in one State to a destination in another State is interstate commerce and continues to be interstate commerce until after the importation is completed and the property imported has mingled with, and become a part of, the general property of the State. Therefore, goods from another State may be sold in original packages, free from any interference of any kind whatsoever on the part of the State in which such goods are attempted to be sold.

Leisy vs. Harden, 135 U. S., 100.
Lyng vs. Michigan, 135 U. S., 161.
Caldwell vs. N. Carolina, 187 U. S., 622.
Schollenberger vs. Pennsylvania, 171 U. S., 1.
May vs. New Orleans, 178 U. S., 496.
Austen vs. Tennessee, 179 U. S., 343.
Cook vs. Marshall County, 196 U. S., 261.
Vance vs. Vandercook Co., 170 U. S., 438.

Under these authorities traffic originating outside of the State of Oregon is interstate commerce until the goods are sold within the State

of Oregon and become mingled with the general mass of property in the State. Any attempt on the part of the State or any person presuming to act under State authority, to interfere with such interstate traffic, either by taxing it, or by preventing its sale, or by hindering its transportation, or by regulating the rates for the transportation thereof, is a regulation of interstate commerce.

"The beginning and the ending of the transit which constitutes interstate commerce are easy to mark. The first is defined in *Coe vs. Errol*, 116 U. S., 517, to be the point of time that an article is committed to a carrier for transportation to the State of its destination, or started on its ultimate passage. The latter is defined to be in *Brown vs. Houston*, 114 U. S., 622, the point of time at which it arrives at its destination" (Mr. Justice McKenna, in *General Oil Co. vs. Crain*, 209 U. S., 228).

Through-shipment and through-carriage by a single carrier or by affiliated carriers are not necessary to interstate commerce. The essential thing is the movement.

A herd of sheep driven at a reasonable speed from a point in Utah across the State of Wyoming, a distance of five hundred miles, to a point in Nebraska for the purpose of shipment by rail

from the latter point, is held to be property engaged in interstate commerce so as to be exempt from taxation in the State of Wyoming under a statute taxing all live stock brought into the State for the purpose of being grazed.

Kelley vs. Rhoads, 188 U. S., 1.

In *Kelly vs. Rhodes* the time consumed in driving the sheep from the western boundary of the State of Wyoming to Pine Bluff station was six to eight weeks. Assume that instead of driving such sheep entirely across the State of Wyoming to Pine Bluff station, the sheep had been loaded upon cars and transported locally within the State for a distance of say fifty miles, and there unloaded and thence moved on foot to Pine Bluff. Certainly the sheep during such movement by rail would have been interstate commerce and the railroad company transporting such sheep would have been engaged in the transportation of interstate commerce.

The appellant as a common carrier engaged in the transportation of the commerce mentioned in the amendment to the bill (Record, p. 77) would undoubtedly be subject to regulation by Congress on the ground that such traffic was interstate traffic. Such regulation would be sustained no matter how disconnected the service

of the appellant might be from any other part of the transportation.

The Daniel Ball, 10 Wall., 557.
U. S. vs. Colo. & N. W. R. R. Co.,
157 Fed. Rep., 321.

The Daniel Ball, a steamboat, was navigating the Grand River in the State of Michigan without a license, and the United States brought a suit for the penalty. The owner of the vessel answered that the steamer was employed solely in intrastate commerce. The parties to the suit stipulated that the vessel operated entirely in Michigan between Grand Rapids and Grand Haven; that she did not run in connection with or in continuation of any line of steamers or vessels on the lake, or any line of railway in the State; that she was a common carrier between the two cities named and that some of the goods carried between the two places were destined and marked for places in States other than Michigan and that some of the goods which she received at Grand Haven came from other States and were destined for places within the State of Michigan. Upon the matters pertinent to the question in this case, this Court said (p. 565):

> "In this case it is admitted that the steamer was engaged in shipping and trans-

porting down Grand River, goods destined and marked for other States than Michigan, and in receiving and transporting up the river goods brought within the State from without its limits; but inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with, or in continuation of, any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the States, and however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State, and some acting through two or more States, does in no respect affect the character of the trans-

action. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress.

" It is said that if the position here asserted be sustained, there is no such thing as the domestic trade of a State; that Congress may take the entire control of the commerce of the country, and extend its regulations to the railroads within a State, on which grain or fruit is transported to a distant market.

" We answer that the present case relates to transportation on the navigable waters of the United States, and we are not called upon to express an opinion upon the power of Congress over interstate commerce when carried on by land transportation. And we answer further, that we are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the States, when that agency extends through two or more States, and when it is confined in its action entirely within the limits of a single State. If its authority does not extend to an agency in such commerce, when that agency is confined within the limits of a State, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at

> the boundary line at one end of a State, and leaving it at the boundary line at the other end, the Federal jurisdiction would be entirely ousted, and the constitutional provision would become a dead letter."

In *U. S. vs. Colorado & N. W. R. R. Co.*, 157 Fed. Rep., 321, it was held that the Safety Appliance Act of Congress applied to a narrow-gauge railroad operating within the State of Colorado, said company not being engaged in interstate transportation in connection with any other railroad. The case, in the language of SANBORN, Circuit Judge, presented but the following question (p. 323):

> " Is a common carrier which operates a railroad entirely within a single State, and transports thereon articles of commerce, shipped in continuous passage from places without the State to stations on its road, or from stations on its road to points without the State, free from any common control, management or arrangement with another carrier for continuous carriage or shipment thereof, subject to the provisions of the Safety Appliance Act?"

It will be further noted, as shown on page 324 of the opinion, that the railroad company involved rebilled the goods, and had aimed, as far

as possible, to avoid being a carrier engaged in interstate commerce. The court held, however, that the railroad was subject to the Safety Appliance Act, for the reason that the goods so transported, although rebilled by the carriers, were, nevertheless, interstate commerce. Upon this point the court said, page 323:

> "Importation into one State from another is the indispensable element, the test, of interstate commerce. Every part of every transportation of articles of commerce in a continuous passage from an inception in one State to a prescribed destination in another is a transaction of interstate commerce. Goods so carried never cease to be articles of interstate commerce from the time they are started upon their passage in one State until their delivery at their destination in the other is completed, and they there mingle with and become a part of the great mass of property within the latter State. Their transportation never ceases to be a transaction of interstate commerce from its inception in one State until the delivery of the goods at their prescribed destinations in the other, and every one who participates in it, who carries the goods through any part of their continuous passage, unavoidably engages in interstate commerce."

If the appellant engaged in transporting such commerce and its cars and equipment hauling the same are subject to regulation by Congress, it would certainly seem that the rates charged by the appellant for the transportation of the same commerce ought to be free from State regulation.

In *Leonard vs. Kansas City Southern Ry. Co. et al.*, 13 I. C. C. Rep., 573, the question involved was whether the Commission could require the belt railway mentioned in the opinion to establish a joint through rate on coal transported from points without the State of Missouri, the belt railway being a line of railway ten miles in length and operating wholly within the State of Missouri. The Commission, speaking through Commissioner Prouty, held that under the Interstate Commerce Act, the Commission had such power. In view of the familiarity of the Interstate Commerce Commission with the practices and the geographical situation of railroads, the following statement made by Commissioner Prouty should be carefully considered in its bearing on this case (p. 586):

> "The case before us concerns a railroad less than 10 miles in length, which performs a very insignificant part in transporta-

tion between the States. It is urged that Congress cannot have intended to lay hold upon this agency of commerce and subject it to the regulation of the Federal Act. But there can be no distinction in principle between the short road and the long one, between the railroad which handles but 100 carloads of interstate freight per year and that which transports thousands daily.

"The New York Central and Hudson River Railroad extends from Buffalo to New York, 440 miles, entirely in the State of New York. Over it flows a vast volume of commerce between points within and without the State. If it be true that the Kansas City and Westport Belt Railway can entirely exempt itself from Federal control with respect to interstate transportation, the same thing must be true of the New York Central. If this railway can decline to receive interstate traffic at Dodson, the New York Central can decline to receive it at Buffalo. If the rates under which the Kansas City and Westport Belt Railway handles interstate business between Dodson and Westport, are not subject to the control of this Commission, then the rates of the New York Central from Buffalo to New York may be withdrawn from our control. If the State of Missouri can determine the

conditions under which freight coming from points without that State shall be carried by this railroad from Dodson to Westport, then the State of New York can determine the terms and conditions upon which traffic received by the New York Central at Buffalo shall be transported to points within the State of New York. To deny the right of Congress to regulate the movement of interstate freight over this 10 miles of railway is virtually to deny its effective power *in toto*."

As clearly indicated by Commissioner Prouty, the main line of the New York Central Railroad Company between New York and Buffalo is located entirely within the State of New York, and yet the New York Central is probably the greatest railroad carrier of interstate commerce in the country.

To assert that the New York Central Railroad or the State of New York can, by requiring or forcing local billing of interstate commerce from Buffalo to New York, change the character of such commerce and prevent Congress or the Interstate Commerce Commission from regulating the same, is to deny *in toto* the effective power of Congress to regulate interstate commerce and the rates thereon.

State legislatures and State railroad commissions have apparently the power to establish depots at any point desired, and therefore the State of Oregon could establish a depot at the Washington State line and the State of Washington on the other side of the State line could establish a like depot. Traffic could, of course, be trucked across the boundary lines and reshipped. If the State of Oregon could regulate the rates from Portland to the State line, and the State of Washington could regulate the rates from the State line to destination, then the transportation of all interstate commerce and the rates to be charged therefor could be regulated and controlled by the States to the exclusion of and contrary to the control thereof by Congress.

In this connection paragraph XXI of the Bill (Record, p. 15) alleges as follows:

> "If the State of Washington should see fit to establish rates in Washington equal to the rates attempted to be established by the said order 'Exhibit I,' the result would be that the interstate rate charged by your orator for the transportation of freight between various points in Oregon and various points in Washington, could not be lawfully or practically greater than the sum of the

respective local rates so attempted to be established by the States of Oregon and Washington, and therefore the said interstate rate would be wholly and necessarily established by the said respective States, to the exclusion of, and contrary to, the sole and exclusive control which should properly be exercised thereover by Congress, under the Constitution of the United States, and by the Interstate Commerce Commission, pursuant to the Act to Regulate Commerce, hereinbefore mentioned."

III.

The Commission order creates an unjust discrimination against interstate traffic destined to eastern Oregon and against wool and other commodities shipped from eastern Oregon to points in eastern States and regulates such interstate commerce by forcing changes in the interstate rates of the appellant or a change in the routing of such traffic.

Assuming but not conceding that all commerce shipped locally between Portland and points in eastern Oregon is intrastate commerce, the State of Oregon nevertheless cannot regulate

the rates upon such traffic so as to burden interstate commerce, or affect the rates thereon, or change the course of transportation thereof. It is well established that the laws of the State or the orders of its Commission relating to intrastate commerce "which by their necessary, natural or probable operation have the effect of substantially burdening interstate commerce, are violative of the commercial clause of the United States Constitution, and void." It is the effect and not the purpose of the State regulations of local commerce which determines whether or not they so substantially burden interstate commerce that they violate the commercial clause of the Constitution.

Both of the foregoing propositions are stated in the opinion in *Western Union Telegraph Company vs. Kansas*, 216 U. S., 1. This Court said therein, at page 27:

> "But the disavowal by the State of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation burdens interstate commerce, it must be

adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through forms to the substance of things."

Under all of the authorities the decisive question is—does the order of the Commission substantially burden, affect or regulate interstate commerce?

The facts alleged in the bill relating to the adjustment of rates in the northwest show conclusively that the order of the Commission does regulate interstate commerce.

Before considering the facts alleged in the Bill, it is deemed proper to call the attention of the court to certain provisions of the Act to Regulate Commerce and to the construction placed thereon by the Interstate Commerce Commission.

By Section 3 of the Act to Regulate Commerce, it is made unlawful for any common carrier to make or give undue preference or privilege to any particular locality or traffic of any description whatever, or subject any particular

locality or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

By Section 4 of the Act, it is made unlawful for any common carrier to charge any greater compensation in the aggregate for the transportation of the same kind of property for a longer than a shorter distance over the same route in the same direction, the shorter being included within the longer distance.

By Section 6, it is provided that all charges of interstate carriers shall be published and filed with the Interstate Commerce Commission, and that no change in such rates shall be made, except after thirty days' notice to the Interstate Commerce Commission.

Every haul by a carrier involves two terminal services, one at the point of origin and the other at the point of delivery, and it is therefore clearly an unjust discrimination as a matter of fact for a carrier to charge a greater compensation as to a through rate than an aggregate of two local rates.

In the practical administration of the Act to Regulate Commerce, the Interstate Commerce Commission has several times stated that a through rate that is higher than the combina-

tion of intermediate rates is *prima facie* unreasonable, and by amendment of June 18, 1910 (36 Statutes at Large, 539), it is provided that it shall be unlawful for any common carrier to charge a greater compensation as to a through route than the aggregate of the intermediate rates, subject to the provisions of the act.

In *Martin vs. Southern Pacific Company*, 2 I. C. C. Rep., 1, the Interstate Commerce Commission, in 1888, held:

> "An intermediate local rate should never exceed the through rate to the terminus of the line plus the local rate back to the intermediate point."

Under the decisions of the Interstate Commerce Commission and of the courts it has been held that the competition by sea between the Atlantic Coast and the Pacific Coast States justifies the railroads operating to the Pacific Coast in charging a higher rate from eastern points to a point in the interior of Oregon, Washington or California than is charged to the Pacific Coast terminal.

Farmers' L. & T. Co. vs. N. P. Ry. Co., 83 Fed., 249.

I. C. C. vs. A. T. & S. F. Ry. Co., 50 Fed. Rep., 295.

Colo. Fuel & Iron Co. vs. S. P. Co., 6 I. C. C. Rep., 488.

Kindel vs. A. T. & S. F. Ry. Co., 8 I. C. C. Rep., 608.

Shippers' Union of Phœnix vs. A. T. & S. F. Ry. Co., 9 I. C. C. Rep., 250.

Business Men's League of St. L. vs. A. T. & S. F. Ry. Co., 9 I. C. C. Rep., 318.

Kindel vs. B. & A. R. R. Co., XI. I. C. C. Rep., 495.

Enterprise Mfg. Co. vs. G. R. R. Co., 12 I. C. C. Rep., 130.

Nevada R. R. Com. vs. S. P. Co., 19 I. C. C. Rep., 238.

Harbor City Wholesale Co. of San Pedro vs. S. P. Co., 19 I. C. C. Rep., 323.

No possible justification, however, exists for the charging of a higher rate to the interior point than the rate to the Pacific Coast point plus the local back to the interior point.

Any attempt on the part of the appellant to charge a greater compensation for the through transportation of interstate commerce to eastern Oregon points than the combination of the rates, resulting from a shipment to Portland and re-

shipment to destination, is an unjust discrimination as a matter of fact, and cannot be sustained as a matter of law; and this is true whether the rates from Portland are made by the appellant voluntarily or are made by the State of Oregon.

The Commission order had the effect of making in each of the following cases the through rate from points of origin to destination, although established under and subject to the Interstate Commerce Act, greater than the combination of the existing interstate rate to Portland from point of origin and the Commission order rate between Portland and eastern Oregon points, to wit:

FIRST. Traffic delivered to the appellant at Portland by any connecting carrier from local points as, for example, delivered by the Northern Pacific from local points in Washington, not covered by any through tariff, destined to eastern Oregon points.

SECOND. Traffic from San Francisco carried by the Southern Pacific Company and the appellant, and by the San Francisco and Portland Steamship Company and the appellant, under the through tariffs to which reference has been made, to eastern Oregon points.

THIRD. Traffic from all eastern points destined to eastern Oregon.

FOURTH. Wool from eastern Oregon destined to Boston and other eastern points.

Such unjust discrimination whether made voluntarily by the appellant or by the Oregon Railroad Commission is subject to the jurisdiction of the Interstate Commerce Commission. *In Reliance Textile and Dye Works vs. Southern Railway Co.*, 13 I. C. R., 48, the Commission says (p. 53):

> "The complaint alleges that the defendants, or some of them, who participate in these through rates to Chicago and to the Ohio River have made unduly low local rates from the producing mill to the southern dyeing establishment. That one upon which the complaint seems to dwell more than any other is a rate of 17 cents per 100 pounds from South Carolina mills to Clearwater. Clearwater is situated in the State of South Carolina, although it takes the rate applicable to Georgia points, and since these low rates from the mills to Clearwater are State rates, the defendant insists that we have no jurisdiction of this aspect of the case.
>
> "To this we cannot agree. The same lines participate in all these rates from the

mill to the dye works of the complainant and its competitor, and from these in turn to the points of consumption. When a discrimination, forbidden by the Act to Regulate Commerce, arises from an adjustment of State and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates cannot escape responsibility by claiming that the discrimination is accomplished through a reduction of the State rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.

"The Southern Railway, for example, names the rate from the producing mill in South Carolina to the works of the complainant at Cincinnati, and it also names the rate from the same mill to the Clearwater works in South Carolina. Its duty is to treat, in the matter of transportation, both these operations with fairness. It can no more shut up the industry of the complainant by unduly reducing the State rate made to its competitor than by unduly advancing the interstate rate which the complainant itself is required to pay.

"This must certainly be so where the State rate is voluntarily made, and we think that the same conclusion must finally be

reached where the State rate is made by State authority. A State can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest."

If the Oregon Commission order be allowed to stand, the only way in which such unjust discrimination could be avoided would be by a change of the interstate rates of the appellant to such an extent that the through interstate rates to eastern Oregon points would be less than the locals by way of Portland. Such a change would affect every interstate rate from all points and places to eastern Oregon points. Any such forced change of rates is necessarily a regulation of interstate commerce.

Louisville & Nashville R. R. Co. vs. Eubank, 184 U. S., 27.

If the interstate rates to eastern Oregon points are not changed the continued existence of the lower rates by way of Portland would cause the direct movement of interstate commerce to eastern Oregon points to cease and to be superseded by a movement first to Portland and then reshipment to destination.

The point under consideration may be made more specific by taking the rate on wool, mentioned in Paragraph XXIV of the bill. Such illustrations, however, might be multiplied by referring to nearly every article mentioned in the Western Classification shipped from any eastern point, or from California.

Paragraph XXIV of the bill (Record, pp. 17–19) shows that large quantities of wool are shipped from points in eastern Oregon to Boston, New York and Philadelphia under tariffs duly published and filed with the Interstate Commerce Commission. The rates so established by the applicable interstate tariff, Exhibit "K," I. C. C. No. 1177, are equal to or less than a combination of the third class rate fixed and established by tariff L–525 from eastern Oregon points to Portland and the transcontinental wool rate from Portland to Boston, New York and Philadelphia of $1.00 per hundred pounds, under Exhibit "J," I. C. C. No. 812, but the combination of said transcontinental wool rate from Portland to Boston with the rates fixed by the Commission from eastern Oregon points to Portland would be less than the interstate rate for the direct transportation from eastern Oregon points to Boston, New York and Philadelphia

under Exhibit "K." In the following table set out in the bill, by way of illustration of the foregoing statement (Record, p. 19), the figures under the words "Present Rate" are the direct interstate rates under Exhibit "K" from eastern Oregon points to Boston, and the figures under the heading "Combined Rate" are the rates resulting from combining the transcontinental rate of $1.00 under Exhibit "J" from Portland to Boston with the third class rate under the Commission's order from the eastern Oregon points named in the table to Portland:

From	Present rate.	Combined rate.
Biggs.....	130	127
Arlington	146	141
Heppner.....	162	155
Umatilla	160	153
Pendleton	172	163
Elgin.....	195	182
Shaniko.....	150	147
Condon	160	153

For a fuller explanation the rates from Pendleton may be used. The through rate under Exhibit "K" from Pendleton to Boston is $1.72 (Record, p. 19). The transcontinental rate from Portland to Boston is $1.00, effective on the lines

of the appellant and its connections and on the lines of the Northern Pacific Railway Company and its connections (Record, p. 17). Under the Western Classification, wool takes the third class rate. Under tariff L-525, page 5 (Record, p. 203), the third class rate from Portland to Pendleton is 72 cents, and this is reduced by the Commission's order to 63 cents. There is, and can be, no justification for the making of a through rate of $1.72 on the direct shipment of wool from Pendleton east to Boston, while a rate of $1.63 could be obtained by shipping the wool first to Portland and thence to Boston. The appellant would be compelled to perform an increased amount of transportation service, and the appellant or connecting carriers of the local shipment to Portland would have to perform a terminal service in delivering the wool and again receiving it. Any such rate adjustment is an unjust discrimination in point of fact. Such unjust discrimination could be removed only in one of the following methods:

FIRST. By increasing the rate from Portland. Such action would prevent the appellant from competing with ocean carriers in the carriage of wool from Portland. This, in and of itself, would be a regulation of interstate commerce.

SECOND. By decreasing the rate from Pendleton. The Pendleton rate was duly published and filed with the Interstate Commerce Commission, and the Bill alleges (Record, p. 18) that such rate is reasonable. Any action of the State forcing a reduction of an interstate rate, lawfully published and filed, is certainly an interference with interstate commerce.

The adoption of either of these methods of removing the discrimination is clearly a regulation of commerce.

Louisville & Nashville R. R. Co. vs. Eubank, 184 U. S., 27.

In that case the railroad company established, in order to meet water competition, a rate of 12 cents per hundred pounds from Nashville, Tennessee, to Louisville, Kentucky, and had in effect a rate of 25 cents per hundred pounds from Franklin, Kentucky, to Louisville. The Constitution of Kentucky prohibited the charging of more for the shorter than the longer distance over the same line, in the same direction. Eubank shipped tobacco from Franklin and commenced an action to recover the difference between the 25 cent rate charged from Franklin and the 12 cent rate charged from Nashville.

The railroad company sought to defend on the ground that the rate from Nashville was made by water competition, and that business could not be obtained under any greater charge than 12 cents. The Supreme Court of Kentucky affirmed judgment in favor of Eubank, and in disposing of the question Mr. Justice PECKHAM said (p. 40):

> "The Nashville owner of tobacco wishes to have it transported to Louisville and asks the defendant to carry it. It responds that it would like to carry it at the rate of 12 cents per one hundred pounds, but that it cannot do so because it has established a reasonable rate between points both of which are in Kentucky, and which rates are more than twelve cents, and that if it were to carry at the rate of twelve cents from Nashville to Louisville it would be necessary, on account of the law of Kentucky, to carry at the same rate all tobacco between all points in that State, which would entail a loss in the business between those points, which the company would not be justified in sustaining; therefore the transportation is declined, for it cannot get more than twelve cents from the Nashville man. Is it an answer to this statement to say that the company can get

this business by lowering its rates within the State to the same rate as charged from Nashville? Is it bound, in order to secure this interstate commerce, to lower its rates all through the State? If it be, is not the law which accomplishes this result a direct interference by the State with interstate commerce? And if it do not lower its State rates and in consequence must raise its interstate rates, in order to make its State rates valid, and thus must lose to an appreciable and important extent the interstate commerce, is not a law from which such necessary and direct consequences result a regulation in effect by the State, of that commerce which ought to be free therefrom?

"In *Hall v. DeCuir*, 95 U. S., 485, it was said: 'But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress.'

"The vice of the provision lies in the regulation of the rates between points wholly within the State, by the rates which obtain between points outside of and those which are within the State.

"The facts in this case have been thus fully referred to for the purpose of showing

how directly and also how injuriously such a provision might affect interstate commerce. Other cases may be supposed, where the effect might not be so oppressive. But the fact which vitiates the provision is that it compels the carrier to regulate, adjust or fix his interstate rates with some reference at least to his rates within the State, thus enabling the State by constitutional provision or by legislation to directly affect, and in that way regulate, to some extent, the interstate commerce of the carrier, which power of regulation the Constitution of the United States gives to the Federal Congress."

In the *Eubank case*, the defendant would have been compelled to lower its State rates in order to remain in the business of the interstate transportation of tobacco from Nashville to Louisville. In the present case, the appellant, by reason of the order of the Commission, is compelled to lower its interstate rates in order that it may remain in the business of interstate transportation. Surely such a result is a regulation of interstate commerce.

If, however, the order of the Commission be allowed to go into effect, and the appellant be not compelled to take any action, and should

take no action, then the direct shipment of wool from Pendleton east to Boston would cease, and the course and current of transportation would be changed to a movement from Pendleton to Portland and thence to eastern destination. The rate from Pendleton on direct shipments of wool to Boston would be 9 cents per hundred pounds higher than the rates for an indirect transportation by way of Portland, or a difference of $1.80 per ton (Record, p. 19). Under such circumstances, how much wool would move direct from Pendleton to Boston, and why should any so move?

Without any change of the interstate rates of the appellant, the establishment of the Commission's rates would stop the direct shipment of wool from Pendleton to Boston to the same extent as if the State of Oregon by direct statute prohibited such movement. Would not such a result be, in and of itself, a regulation of interstate commerce?

Everything which has been said with reference to wool might be applied to all classes of traffic from the east, and to all traffic from California. The same discriminations would exist, the same changes in interstate rates would be forced, and if such discriminations were not cor-

rected, then the direct shipment of merchandise to eastern Oregon points from California and from points east of Missouri River would cease, and, in lieu thereof, there would be substituted a movement to Portland and a reshipment from thence to destination. The facts in this regard are alleged in paragraphs XVI and XVII of the bill (Record, p. 11). These paragraphs are as follows :

" XVI. For the purpose of illustrating the effect of the order, Exhibit 'I', upon the traffic of an interstate character, passing over the lines of railroad operated by your orator, your orator presents a table showing the rates specified in Union Pacific tariff I. C. C. No. 1578, on some commodities mentioned in said tariff, from Chicago and common points to La Grande and Baker City, Oregon, and also the rates which a shipper would pay for a transportation of the same commodity from Chicago and common points to La Grande and Baker City, provided such shipper caused his goods to be first transported to Portland at the rate fixed by the Transcontinental Terminal Tariff, and then caused said goods to be reshipped from Portland to destination under the rates attempted to be fixed and established by the Railroad Commission of Oregon in said order,

Exhibit 'I'. In said table the figures under the words 'present rate' are the rates fixed and established by Union Pacific tariff I. C. C. No. 1578, under direct shipment from Chicago and common points to La Grande and Baker City, and the figures under the words 'combined rate' are the rates which a shipper would pay by shipping his goods from Chicago and common points first to Portland and then reshipping them to destination. The following is the table hereinbefore mentioned :

Commodities.	From Chicago and common points to—			
	La Grande		Baker City	
	Present rate.	Combined rate.	Present rate.	Combined rate.
Bottles, (Glass) Common, (Glass) Common in Demijohns, Flasks, (Glass) Common in Boxes, Barrels or Crates, Str. or Mxd. C. L.	1.48	1.43	1.48	1.44
Coffee, Green, C. L.	1.52	1.48	1.52	1.49
Jars and Glasses, Fruit or Jelly, C. L.	1.49	1.43	1.50	1.44
Matches, C. L.	1.79	1.69	1.79	1.70

"It thus appears that if the rates attempted to be fixed by the Railroad Commission of Oregon, from Portland to points east of The Dalles by said order Exhibit 'I,' should go into effect, then your orator and the other companies concurring in Union Pacific tariff I. C. C. No. 1578, would have to reduce the rates so fixed and established by said tariff, or otherwise, all direct shipments of merchandise from Missouri River or common points and points east, to points in Oregon east of The Dalles, would cease, and such freight would first be transported to Portland and then reshipped to destination.

"XVII. As a further example of the effect which the enforcement of said order Exhibit 'I' would have upon the rates and tariffs now charged by your orator in connection with other carriers for the carriage of freight between the several States, your orator shows that the rates now in force and effect, and as shown by published tariffs of your orator and the San Francisco and Portland Steamship Company, jointly issued and filed with the Interstate Commerce Commission, are made by adding to the rates in force and effect by virtue of tariff No. L-525, from Portland to Baker City, La Grande, and other points east of The Dalles, certain arbi-

traries or local rates, which taken together form the through rate from San Francisco to such points and places in eastern Oregon. Said rates from San Francisco to such points are generally less than the combination of the local rate from San Francisco to Portland, and the local rate from Portland to destination, but such rates would be generally higher than the combination of the local rate from San Francisco to Portland and the rates attempted to be established by the said order, Exhibit 'I', from Portland to destination.

"The following table of commodities, selected as being representative in character, show the through rates in effect at the present time, from San Francisco, California, to La Grande and Baker City, Oregon, via the lines of your orator and the steamship line of the San Francisco and Portland Steamship Company, and the rate which would result from a combination of the local rate from San Francisco to Portland and the local rate from Portland to destination, attempted to be established by the said Railroad Commission of Oregon by its order Exhibit 'I'.

"The figures under the words 'present rate' are the present through rates upon the commodities indicated and the figures under the words

'combined rate' are the rates upon the same commodities resulting from the combination of the local rates by way of Portland:

Commodities.	From San Francisco, California, to—			
	La Grande		Baker City	
	Present rate.	Combined rate.	Present rate.	Combined rate.
Canned Goods, C. L.	.79	.78	.80	.79
Coffee, Green, C. L.	.79	.75½	.80	.76½
Dried Fruits, C. L.	.95	.94	.95	.95
Hardware, any quantity subject to second class rates...	1.34	1.23	1.40	1.24
Sugar, C. L.....	.76½	.73	.77½	.74

"As a further example of the effect which the enforcement of said order, Exhibit 'I', would have upon the rates now charged by your orator, in connection with other carriers upon freight transported between other States, your orator shows that the rates in force and effect and as shown by the published tariffs of your orator and the Southern Pacific Company, jointly issued and filed with the Interstate Commerce Commission, are made by adding to the rates in force and effect under tariff L-525

from Portland, Oregon, to Baker City, La Grande, and other points in Oregon east of The Dalles, certain arbitraries or local rates which, taken together, form the through rate from San Francisco to such points and places. Such rates are generally less than the combination of the local rate from San Francisco to Portland and the local rate from Portland to destination, but such rates would be generally higher than the combination of the local rate from San Francisco to Portland and the rates attempted to be established by the said order, Exhibit 'I', from Portland to destination.

"The following table of commodities, selected as being representative in character, shows the through rates in force at the present time, and the rates which would result from the combination of the local rate from San Francisco to Portland and the rate from Portland to destination attempted to be established by said Railroad Commission of Oregon by its order, Exhibit 'I'. The figures under the words 'present rate' are the through rates upon commodities indicated, from San Francisco to La Grande and Baker City respectively, and the figures under the words 'combined rate' are the rates which would result from combining the locals from San Fran-

cisco to Portland and from Portland to destination, to wit:

Commodities.	From San Francisco, California, to—			
	La Grande		Baker City	
	Present rate.	Combined rate.	Present rate.	Combined rate.
Canned Goods, C. L.	.82	.76	.83	.77
Coffee, Green, C. L.	.82	.76	.83	.77
Dried Fruits, C. L.	.98	.87	.98	.88
Hardware (Less carloads) taking 2d class rates	1.40	1.24	1.46	1.25
Do. (Car loads)	1.37	1.21	1.43	1.22
Sugar, C. L.	.79½	.73½	.80½	.74½

"And so it is, that if such rates so undertaken to be established by said order, Exhibit 'I', should not be enjoined, and should go into effect, your orator and other carriers engaged in carrying interstate traffic from points in California to points in Oregon east of The Dalles, would have to reduce rates now in force from California to such eastern Oregon points, or otherwise all interstate shipments from California to such eastern Oregon points would cease, and all such freight would be shipped from California to Port-

land, and thence shipped locally from Portland to destination."

What merchant at La Grande (Record, p. 13) would pay from six to sixteen cents more per hundred pounds for the direct transportation from San Francisco of canned goods, coffee, dried fruits, hardware and sugar? Would not such eastern Oregon merchant be practically forced by the order of the Commission to purchase his goods in Portland or make an arrangement for the transshipment thereof unless the appellant corrected the unjust discrimination by reducing its interstate rates from San Francisco?

Paragraph XXII of the bill (Record, p. 15), is as follows:

"Certain persons in Baker City, Oregon, are engaged in the jobbing business, and are attempting to sell in Baker City and nearby places, goods originating at points and places east of the Missouri River, and goods originating in California, in competition with persons engaged in the jobbing business at Portland, Oregon. As will be seen by reference to tariffs, Union Pacific I. C. C., No. 1578, transcontinental terminal tariffs, and tariff No. L-525, hereinbefore exhibited as part of this bill, a Baker City jobber pays a freight rate from the point of

origin in the east, or in California, on the goods so sold by him, generally equal to the carload rate to Portland, plus the carload rate from Portland to Baker City, and then has to pay the less than carload rate from Baker City to the point of distribution; and the Portland jobber has to pay the carload rate from point of origin in the east or California, to Portland, and the less than carload rate from Portland to destination. So it is that the profit of the Baker City jobber, and his ability to sell goods, depends upon the difference between the carload rate from Portland and the less than carload rate from Portland to the point of destination. A comparison of the rates established by tariff No. L-525 with the rates attempted to be established by the order, Exhibit 'I', taken in connection with the western classification, shows that said order, Exhibit 'I' greatly decreases the difference between the carload rates from Portland and the less than carload rates from Portland, so that interstate traffic originating in the east and in California, and so in the past distribution from Portland and from Baker City respectively, can only be distributed advantageously and with profit, from Portland to all points in eastern Oregon, and thereby such order, Ex-

hibit 'I', attempts to regulate the movement, as well as the rate charged, upon such interstate traffic, to the exclusion of, and contrary to, the control which should properly be exercised by Congress, under the Constitution of the United States, and by the Interstate Commerce Commission, pursuant to the Act to Regulate Commerce, hereinbefore mentioned, and therefore said order, Exhibit 'I' is void."

This paragraph should, of course, be read in connection with paragraphs XVI and XVII of the bill, and from all of these paragraphs it will be seen that the direct carload rate from points of origin in the east and in California to Baker City would as the result of the rate adjustment established by the Commission have been but little higher than the carload rate from the point of origin to Portland plus the less than carload rate to Baker City. The court discussed this matter in the first opinion (Record, pp. 68, 69), and said:

> "This is only an illustration of how rate-making may destroy and build up jobbing centres, considering the fact stated to be true, and the deduction legitimate. But transportation companies do not have, nor can they longer claim, a monopoly upon

rate-making. * * * If this kind of traffic, with the freight rate imposed upon it by the State, is of such proportions and such percentage as to affect trade in interstate merchandise, and therefore render it advantageous to interstate lines to change their rates so as to control the trade in certain channels, that is not a trenching upon the exclusive authority of congress to regulate interstate commerce. The interference is but incidental, and flows from a perfectly legitimate regulation of freight rates by the State, an altogether natural movement of trade; and the condition is absolutely beyond the control of Congress."

In view of the fact that all of the traffic handled through Baker City is interstate traffic, paragraph XXII of the bill clearly shows that the order of the Commission hinders and prevents the transportation of interstate commerce and its subsequent distribution therefrom. While it is true that transportation companies no longer have a monopoly upon rate-making it is respectfully submitted that no State commission should be given a monopoly to regulate rates upon commerce which is clearly interstate.

It is respectfully submitted that the facts alleged in the Bill, and necessarily admitted by

the demurrer, show that the rates between Portland and points in eastern Oregon are so closely intermingled with interstate rates that the order of the Commission reducing such rates directly regulates interstate commerce and the course of transportation thereof. Such order should, therefore, be declared to be void notwithstanding the fact that the order apparently attempts only to regulate rates between points in Oregon. The appellant cannot avoid the doing of business between local points in Oregon, and by the attempted regulation must submit to a direct reduction in its interstate rates or the increased burden of transporting practically its entire interstate traffic by way of Portland. Such a condition of things brings the case clearly within the decision of this Court in *Western Union Telegraph Co. vs. Kansas*, 216 U. S., 1.

If the appellant did not change its interstate rates, then the very continuance of such interstate rates would subject localities to unjust discriminations. Can the appellant, under the Interstate Commerce Act, continue to charge more for the direct transportation of wool from Pendleton to Boston than it charges from Pendleton to Portland and thence to Boston? Can the appellant continue to charge more for the direct

transportation of merchandise from all eastern points to Baker City and Pendleton than it charges for the transportation from the same eastern points to Portland and thence back to Pendleton or Baker City? Such rates could not be continued for the reason that the provisions of the Interstate Commerce Act directly relating to both of these interstate rates, would compel the defendant to cease such discriminations.

If such discriminations could be continued, and thereby the course of traffic be changed from direct shipment to indirect shipment by way of Portland, would not such changes in the course of transportation be a regulation of interstate commerce?

IV.

The Oregon Commission rates create an unjust discrimination against points in Washington.

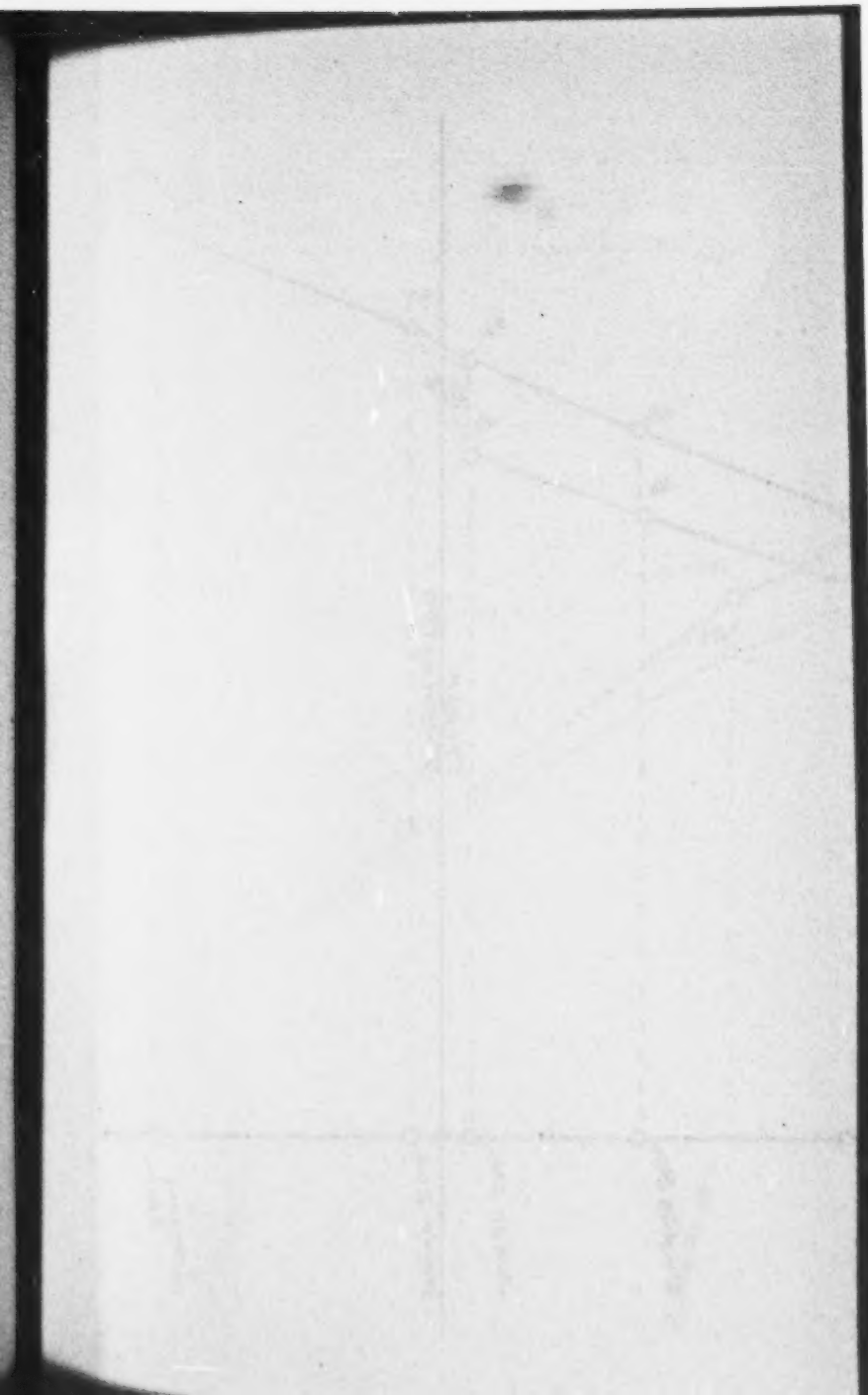
Unless the appellant voluntarily reduced, or was compelled to reduce, its rates between Portland and eastern Washington points fixed by tariff L-525, the Commission order rates in Oregon would

have had the effect of making a sharp and decided raise in rates from the last point in Oregon to the first point in Washington. This is illustrated by an examination of tariff L-525.

Under tariff L-525 the first class rate to Arlington, Oregon, 141 miles east of Portland, is 65 cents; the rate to Castle Rock, Oregon, 161 miles east of Portland, is 75 cents; the rate to Umatilla, Oregon, 186 miles east of Portland, is 85 cents (p. 5 of tariff, Record, p. 203); the rate to Juniper, Oregon, 206 miles east of Portland, is 93 cents; and the rate to Wallula, Washington, 213 miles east of Portland, is 97 cents; and the rate to Simmons, Washington, 244 miles from Portland, is $1.09 (p. 6 of tariff, Record, p. 203). The order of the Commission (Record, p. 183) requires that the rates above mentioned shall be reduced by an amount equal to one-sixth of the difference between 25 cents (the existing first class rate to The Dalles) and the first class rates above mentioned, rejecting fractions of a cent as prescribed by that portion of the order found on page 184 of the Record. Applying this formula the first class rates to the various Oregon points would be as follows:

Arlington	$.51
Castle Rock	.69
Umatilla	.75
Juniper	.88

Commencing with first class rate of 25 cents at The Dalles as the base (such rate being unchanged by the Commission order) the rate scale under tariff I.-525 would be graphically represented as follows after the Commission order went into effect, the rates to Washington remaining unchanged:



Scale—Horizontal 1 inch=20 miles.
Vertical 1 inch=20 cents.

In the foregoing illustration, the green line represents the rates from Portland fixed by tariff L-525 to various points as far east as Simmons, Washington. The red line represents the rates fixed by the Commission order to Juniper, Oregon. The line running sharply upward from the end of the red line to the green line represents the sharp rise in rates which results in the rates from Portland to Washington points, if the Commission order rates are enforced in Oregon and no corresponding reduction is made by appellant in the rates to Washington points.

Any such rise is necessarily an unjust discrimination and such unjust discrimination cannot be avoided except by a reduction of the rates of the appellant in Washington to a scale relatively just when compared with the State rates in Oregon.

Unjust discriminations are prohibited in broad terms by the Interstate Commerce Act, and no reasonable construction can be placed upon such act limiting its prohibitions to discriminations caused solely by interstate rates.

Upon this point the attention of the Court is called to the opinion of SANBORN, Circuit Judge,

in *Shepard v. Northern Pacific Ry. Co.*, 184 Fed. Rep., page 796, as follows:

"But counsel insist that, if Congress had the power to forbid this discrimination, it did not exercise it because it declared in the proviso to section 1, that the provisions of the Interstate Commerce Act should not apply to transportation wholly within one State. But the main object of the act was to prevent every undue discrimination between parties and between localities. When it was enacted there was a crying evil in such discriminations, an insistent public demand for the remedy thereof, and a determined effort by the legislators to make the prohibitions of such discriminations as broad, searching, and effective as the Congress had the power to make them. It had, as we have seen, ample authority to forbid discriminations wrought by differences between intrastate and interstate rates, but none to prohibit discriminations caused by differences in rates for transportation wholly within a State. The act prohibits any undue discrimination in any respect whatever between localities under similar circumstances and conditions by any common carrier subject to its provisions. In the light of these facts, the natural and

reasonable construction of the proviso in section 1 is that it was inserted out of abundance of caution to make sure that the broad terms of the act did not go beyond the constitutional power of the Congress and directly regulate intrastate commerce more than was necessary completely to regulate interstate commerce, and that it has no farther effect upon the subject of discrimination now under discussion. The evil the act was passed to remedy, the main purposes of its passage, the public demand for a prevention of all discriminations, the patent effort of the legislators to meet this demand, and the broad terms of the prohibitions themselves compel the conclusion that the Congress intended to exercise, and that by this act it did exercise, its constitutional power to prevent discriminations of the character here in question to its utmost extent, and that the companies were and are prohibited thereby from making or maintaining the unjust discriminations between localities which the maintenance of their former lawful interstate fares and rates and the intrastate rates prescribed by the acts and orders of the officers of the State would necessarily affect."

Conclusion.

The decree of the Circuit Court should be reversed and the demurrers to the amended bill overruled.

Respectfully submitted,
W. W. COTTON,
MAXWELL EVARTS,
Of Counsel for Appellant.

Office Supreme Court, U. S.
FILED.
OCT 14 1911
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 159.

THE OREGON RAILROAD & NAVIGATION COMPANY,
A CORPORATION, APPELLANT,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON,
OSWALD WEST, and A. M. CRAWFORD,
APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON.

BRIEF FOR APPELLEES.

A. M. CRAWFORD,
Attorney-General of the State of Oregon.
CLYDE B. AITCHISON,
JOSEPH N. TEAL,
of Counsel for Appellees.



In the Supreme Court of the United States

October Term, 1911

THE OREGON RAILROAD AND NAVIGATION COMPANY,
a Corporation,
Appellant,

v.

THOMAS K. CAMPBELL,
CLYDE B. AITCHISON,
OSWALD WEST, and
A. M. CRAWFORD,
Appellees.

Brief for Appellees.

Appeal from the Circuit Court of the United States for the District of Oregon.

STATEMENT.

The case is before the Court upon appeal from a decree of the Circuit Court of the United States for the District of Oregon, dismissing the bill of complaint and amended bill of complaint of The Oregon Railroad & Navigation Company against Thomas K. Campbell, Clyde B. Aitchison, Oswald West and A. M. Crawford. The first three named defendants together con-

stituted the Railroad Commission of Oregon, and A. M. Crawford was and is Attorney General of said State (Rec. 4).*

The bill and amended bill challenged the constitutionality of the act of the Legislative Assembly of the state of Oregon creating the Railroad Commission of Oregon, the powers granted the Commission under said act and the validity of an order of said Commission affecting certain class rates charged for the transportation of commodities thereunder over the lines of appellant's railways within the state of Oregon. Pending the hearing a temporary restraining order was prayed for, restraining defendants from enforcing the order. The bill prayed that upon the hearing a temporary injunction be issued enjoining defendants from attempting to enforce said order, and for a permanent injunction and other relief therein set out.

Demurrers were interposed to the bill and amended bill which were sustained by the Court below and the decree entered now appealed from.

Appellant is an Oregon corporation, operating various main and branch lines of railway in Oregon, Washington and Idaho. At Huntington, Oregon, it has physical connection with the lines of the Oregon Short Line Railroad Company, which, together with other connecting lines, forms a through line or railway for the transportation of passengers and freight from various points of origin in eastern states to various points and places in the state of Oregon. Appellant carries on both intrastate and interstate commerce.

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*References to Record are to pages of the printed record.

The Railroad Commission of Oregon was created by act of the Legislative Assembly of the state of Oregon in the year 1907 (Rec. 3).

Under the provisions of this act a complaint was filed with said Commission by the Portland Chamber of Commerce attacking the class rates in effect over and on the appellant's main and branch lines between Portland, Oregon, and other points and places in said state, as excessive, unjust and unreasonable.

The rates complained of appear, with other rates, in the tariff of appellant effective January 1, 1907, No. L-525, O. R. C. No. 39, I. C. C. No. 1146 with supplements amendatory thereof (Rec. 7).

After due hearing and investigation, in which the appellant appeared and participated, the Commission found certain of the class rates named in said tariff over the lines of appellant within Oregon between Portland and other points and places in said state east of The Dalles to be unjust and unreasonably high. The Commission further found and determined reasonable rates to be charged in the future for the transportation of freight by the appellant under such class rates between Portland and the points east of The Dalles within the state of Oregon. In accordance with this determination, on April 22, 1908, it condemned the existing rates and by order duly made and entered fixed the class rates which it had determined to be reasonable, to be thereafter charged for said transportation between said points. The rates ordered were lower than those then in effect. The order was duly served and appellant given twenty days after the service thereof to comply therewith (Rec. 9, 182).

Thereafter, on May 11, 1908, appellant filed the bill of complaint in the Circuit Court below, and a temporary restraining order was issued as prayed.

Defendants appeared to show cause and proof was submitted by both parties thereon; and at the same time defendants filed a general and special demurrer to the bill. The case was submitted both upon the demurrers and the application for a preliminary injunction.

On September 28, 1909, the Court below sustained the demurrers. (173 Fed. Rep. 957, Rec. 39.)

On November 18, 1909, an amendment to the bill of complaint was filed (Rec. 77), to which a general and special demurrer was interposed (Rec. 81, 86). On February 21, 1910, the Court below sustained the demurrers (177 Fed. Rep. 318, Rec. 86) and on March 4, 1910, decree was entered sustaining the demurrers, dismissing the amendment to the complaint and the amended complaint and vacating the restraining order and awarding defendants their costs and disbursements (Rec. 89).

Shippers presented to appellant certain claims for overcharges collected by it pending the hearing and while the restraining order was in effect, payment of which was refused on the grounds that the particular shipments constituted interstate commerce. Thereupon W. S. Smallwood filed a petition in intervention setting forth the facts as to certain shipments and praying for an order requiring the appellant to show cause why the said claims were not paid (Rec. 90).

The question was submitted on the petition in intervention, and on July 11, 1910, the Court below filed its opinion, and held that the shipments embraced in

the petition were not interstate commerce, but on the contrary were intrastate commerce and directed the payment of the excess charges collected thereon. (180 Fed. Rep. 258, Rec. 96.) Findings, judgment and decree were entered in accordance therewith (Rec. 100).

On September 2, 1910, a petition for appeal to this Court was filed (Rec. 101), and the appeal was allowed and perfected.

THE PLEADINGS.

As this cause was heard and determined on complaint, amended complaint and demurrers, a statement of the allegations is necessary to disclose the issues. It is not considered essential to set out the voluminous bill and its amendment *in haec verba*, as on argument more extended references will be made to certain parts thereof, but the allegations will be summarized fully enough to disclose their intent.

ALLEGATIONS OF THE COMPLAINT.

Paragraphs I to VI inclusive are the introductory portions and set out the organization of complainant, the location of its lines of railway, that it is engaged in both intrastate and interstate commerce; that its principal business is interstate commerce, less than 20% being local within Oregon. The official positions of defendants and their citizenship and residence is set forth in paragraph II (Rec. 3). Paragraph III (Rec. 3) sets forth the fact of the passage of the Railroad Commission Act. A copy of the act will be found at page 115 of the record.

Paragraph IV (Rec. 4) sets up the appointment of the defendant members of the Railroad Commission.

Paragraph V sets forth that A. M. Crawford is the Attorney General of the state of Oregon and that Section 57 of the Railroad Commission Act makes it his duty to enforce the provisions thereof (Rec. 4).

Paragraph VI alleges that the suit is one arising under the constitution and laws of the United States, in that it seeks among other things to enjoin the defendants from attempting to enforce the provisions of a certain order thereafter referred to in the complaint as to rates and charges for the transportation of freight on the railroads of the complainant, and from instituting any action or proceeding against complainant or its officers, etc., on account of any violations of the terms or provisions of said order or from attempting to enforce the provisions of the Railroad Commission Act, for the reason that the act and the order and all the tariffs, rates, charges and regulations assumed to be prescribed by the order are in violation of the constitution of the United States and an Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce" and acts amendatory thereof and supplemental thereto. That the revenue of complainant from the interstate transportation of freight is large and the portion thereof affected by the pretended order of the Railroad Commission, if enforced, and the rates therein mentioned be put into effect, will largely exceed the sum of $2000 exclusive of interest and costs, etc. (Rec. 4).

Paragraphs VII to XIII inclusive (Rec. 5-9) allege that the complainant has physical connection with the Oregon Short Line, and it with the Union Pacific Railway, and these connect with various lines of rail-

road of the Chicago & Northwestern Railroad Co., and the Chicago, Rock Island & Pacific Railway Co. and the Chicago, Milwaukee & St. Paul Railway Co.; and that by these connections and through tariffs published and established by the companies concerned, commodities of all kinds have moved from Chicago and other points located upon and east of the Missouri River to Portland, Oregon, and to places east of The Dalles reached by the lines of the complainant.

That the Union Pacific Railroad Co., the Oregon Short Line Railroad Co. and the complainant issued and published a tariff covering the transportation of freight between said eastern points and various stations on complainant's line east of The Dalles, which was duly filed with the Interstate Commerce Commission and became effective after January 2, 1904, and is in effect and operation with some amendments at the present time. This tariff is numbered "U. P. R. R., I. C. C. No. 1578" and with three supplements thereof was made a part of the complaint (Rec. 6, 161, 173, 175, 176).

The complainant and various other companies promulgated a tariff naming class and commodity rates on merchandise and commodities effective January 18, 1904, from New York and common points and other points in eastern territory, including Missouri River common points, to certain North Pacific coast terminals, including Portland, designated "Transcontinental Freight Bureau No. 4-C," and which is known as the "Transcontinental Terminal Tariff." Rates under this tariff are named to no point or place on the lines of the complainant's railroad east of Montavilla, Oregon.

(Montavilla is a suburban station within the corporate limits of Portland.)

That complainant and other lines of railroad have been transporting large quantities of merchandise and commodities in accordance with the rates and conditions in said tariff. A copy of this tariff and its supplement, marked Exhibit F and Exhibit G, were made a part of the complaint, but are not printed in the record.

It is alleged that the rates mentioned in the foregoing tariffs are in effect and are the only lawful rates which the complainant and other carriers parties thereto can charge between the points and places mentioned in the tariffs and supplements thereto.

That complainant has in effect a freight tariff naming class and commodity rates based upon the existing Western Classification between Portland, East Portland, Albina and St. Johns, Oregon, and the stations on its lines in Oregon, Washington and Idaho, effective January 1, 1907, designated as "No. L-525, I. C. C. No. 1146." A copy of this tariff marked Exhibit H (Rec. 186) was attached to the complaint and made a part thereof. This tariff was published and filed with the Interstate Commerce Commission and with the Railroad Commission of Oregon and has been since January 1, 1907, in full force and effect. It is alleged that the rates fixed by said tariff and the supplements are the only rates which complainant is authorized to charge for the transportation of freight described in the tariff between Portland, East Portland and St. Johns and various points in Oregon, Washington and Idaho east of The Dalles, Oregon, "and are reasonable rates." That complainant and the Sea

Francisco & Portland Steamship Company (which operates a line of steamships between Portland and San Francisco), have heretofore issued and have now in operation a joint freight tariff between San Francisco, California, and Portland and points on the complainant's line in Oregon east of The Dalles, designated as "O. R. & N., I. C. C. No. 967." A copy of this tariff and supplement was attached to the bill and marked Exhibit N. That since June 1, 1905, the Steamship Company and complainant have been engaged in transporting merchandise between San Francisco, California, and points on the lines of complainant east of The Dalles, at the rates and under the conditions named in the tariff and such tariff is now in full force and effect. That the Steamship line and the complainant constitute a through route, making through rates under a common management and control and subject to the Interstate Commerce Act, and acts amendatory thereof; and as such through route are subject to the jurisdiction of the Interstate Commerce Commission; and that the rates "are reasonable rates;" that the rates so fixed are made up by adding certain arbitraries or local rates to the rates established by tariff No. L-525 from Portland to the various points and places in Oregon east of The Dalles.

That the Southern Pacific Company (the railroad lines of which connect with the lines of complainant at Portland), and complainant have adopted and have now in effect a joint tariff covering transportation from San Francisco and other California points, and Portland, and to all points in Oregon east of The Dalles on complainant's lines. Said tariff is designated as

Southern Pacific I. C. C. No. 2180. The Southern Pacific and complainant have transported merchandise from San Francisco and other California points to Portland, and points east of The Dalles, in Oregon, under said tariff, and the same constitutes interstate commerce; that the through rates from California to points east of The Dalles in Oregon consist mainly of a combination of the rates fixed by tariff No. L-525 from Portland to such points east of The Dalles and certain arbitraries or local rates and "are reasonable rates."

Under paragraph XIV (Rec. 9), it is alleged that under date of April 22, 1908, the Railroad Commission of Oregon made and entered the order in question, which was served upon the complainant on April 23, 1908, to become effective 20 days thereafter. This order, Exhibit I (Rec. 182), was made part of the complaint. By the order it was found and declared *inter alia*, that the class rates now in effect, under tariff No. L-525 with supplements amendatory thereto, over and on complainant's lines in Oregon between Portland and all points in Oregon on complainant's lines east of The Dalles, were unjust and unreasonably high, and complainant was directed to cease and desist from charging any higher rates for transportation between such designated points within the state of Oregon than the class rates prescribed by said order; and that in lieu of said class rates established by said tariff No. L-525 the complainant should substitute and adopt the class rates specified in said order, which were to all points east of The Dalles greatly less than the rates established by tariff No. L-525 covering the same points.

Appellant was directed to prepare and file new tariffs within 20 days of the service of the order, publishing and establishing the rates so prescribed.

Paragraph XV (Rec. 10) alleges that at least 70% of the traffic carried and hereafter to be carried from Portland to such points east of The Dalles under the class rates fixed by tariff L-525 originates and will originate on points along or east of the Missouri River, or in California, and was and will be first transported to Portland and from thence under the class rates of L-525, or under the class rates established by the order of the Railroad Commission; and large quantities of like goods are transported directly from the east to points in Oregon east of The Dalles by complainant and allied lines at and under rates fixed by Union Pacific tariff I. C. C. No. 1578, and from points in California to points in Oregon east of The Dalles, at rates fixed by tariffs in force from California to points in Oregon east of The Dalles as alleged. That by U. P. tariff I. C. C. No. 1578 it was provided that where the rate to or from the point of shipment to Portland added to the local rate under L-525 from Portland to such Eastern Oregon points is lower than the through rate under tariff No. 1578, then the combination of such transcontinental and local rate will govern; that the tariff rates fixed by tariff No. 1578 applying to points on complainant's lines in Oregon east of The Dalles, and particularly the class rates, are generally higher than the combination rates, and the commodity rates fixed by the transcontinental tariff are generally somewhat less than the combination of the transcontinental terminal rate to Portland added to the tariff under L-525, and "are

reasonable rates," but that such commodity rates so fixed by tariff No. 1578 are greater than the combination of the transcontinental rates and the rates fixed by the Railroad Commission to said points east of The Dalles.

Paragraphs XVI and XVII (Rec. 11) give illustrations as to the effect of the enforcement of the order of the Commission on rates from certain designated eastern points and from California points to certain points in Oregon.

Under paragraph XVIII (Rec. 13) it is alleged that, should the Railroad Commission's order become effective, it would affect not only the interstate rates specifically mentioned for the purpose of illustration, but every other interstate rate now in force and effect from Missouri River common points and points east thereof to points in Oregon east of The Dalles, and from points in California to like points in Oregon; and that the order necessarily amounts to an attempt to regulate the commerce between the several states and is an infringement upon the exclusive power of Congress and of the Interstate Commerce Commission.

Under paragraph XIX (Rec. 14) it is alleged that, should complainant attempt to comply with the order, it would be compelled to violate the Act of Congress and the regulations promulgated by the Interstate Commerce Commission in that no interstate rate contained in any of the interstate tariffs hereinbefore mentioned can be changed without giving 30 days notice, and in this particular the order is an attempt to regulate interstate commerce and is void.

By paragraph XX (Rec. 14) it is alleged that the rates established by tariff L-525 are lower than those

established for similar traffic from any point on complainant's lines, other than Portland, to any other point on complainant's lines in Oregon, Washington or Idaho, and that the movement of traffic under such tariffs from Portland to points in Washington or Idaho is large and the revenue derived therefrom is great; that the rates established by such tariff No. L-525 from Portland to points east of The Dalles are lower than the rates charged by any other railroad company in Oregon, Washington or Idaho for the transportation of similar traffic for the same distance; that the rates attempted to be established by the said order are lower than the rates fixed and established by said tariff No. L-525 and are unreasonably low and unjust to the complainant. It is alleged that while the immediate effect of such order, if it could be confined strictly to the state of Oregon, might leave complainant a fair income upon its entire business, nevertheless if the rates attempted to be established by the said order be applied to the interstate business directly affected thereby, and if the percentage of reduction effected by such order be applied to the local business of complainant in the states of Oregon, Washington and Idaho, which local business is now being transacted upon rates higher than those fixed by tariff L-525, it will operate to confiscate the property of the complainant and to deprive it of property without due process of law in violation of the constitution of the United States, because such reductions will leave complainant without any fair net earnings upon its property.

Paragraph XXI (Rec. 15) alleges that, if the state of Washington should see fit to establish rates in Wash-

ington equal to the rates established by the order in question, the result would be that complainant's interstate rate for the transportation of freight between points in Oregon and points in Washington could not be lawfully or practically greater than the sum of the local rates so attempted to be established by the states of Oregon and Washington, and therefore the interstate rate would be wholly and necessarily established by the respective states to the exclusion of and contrary to the sole and exclusive control which should be properly exercised thereover by Congress, pursuant to the Act to Regulate Commerce.

Paragraph XXII (Rec. 15) alleges the effect upon the business of those engaged in jobbing merchandise in Baker City, Oregon. It is alleged that the profit of the Baker City jobber and his ability to sell goods depend upon the difference between the carload rate from Portland and the less than carload rate from Portland to the points of destination. It is alleged that the order greatly decreased the difference between the carload rates from Portland and the less than carloads from Portland, so that interstate traffic originating in the east and in California can only be distributed advantageously and with profit to all points in eastern Oregon from Portland, and thereby the order unconstitutionally attempts to regulate the movement as well as the rate charged upon interstate traffic.

Paragraph XXIII (Rec. 16) alleges that a large number of railroad companies, among others the Northern Pacific Railroad Co., which operates a railroad line from Portland to St. Paul, Minnesota, and has a physical connection with the Chicago, Burlington & Quincy

Railroad Co. and other railroads, have concurred in the publishing and filing of the rates established by the Transcontinental Terminal Tariff; that these rates apply from eastern points to Portland by way of the lines of the Northern Pacific Railroad Company and its connections, and that said company and its connections are engaged in carrying large quantities of freight under said tariff from eastern points to Portland; that the rates fixed by said transcontinental tariff are very low and are less than reasonable rates for the service performed on account of water competition from eastern points to Portland and other North Pacific coast terminals; that the direct effect of enforcing the rates established by said order would be to compel complainant and its connecting lines, parties to tariff I. C. C. No. 1578, to reduce the rates established by said tariff from all eastern points to all eastern Oregon points, to an amount equal or less than the combination of the transcontinental terminal rates and the rates in question, and thus compel complainant and other carriers to transport freight from points east of the Missouri River to points east of The Dalles for less than reasonable rates, or compel complainant and connecting carriers to cease the direct carriage of said traffic from points east of the Missouri River to points in Oregon east of The Dalles, and allow such traffic to be first transported to Portland, in part by ocean, or in part by the lines of the Northern Pacific Railroad Co., thus diverting large quantities of such interstate traffic from the lines of complainant and its connections, to the lines of other carriers.

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Paragraph XXIV (Rec. 17) sets out the effect of the order on rates on wool. It alleges that rates on wool have been established to Boston and other eastern points under certain conditions of $1 per hundred pounds from Portland; that this rate also applies over the Northern Pacific Railroad Co.; that the rate is low and less than reasonable, and is made as a result of water competition from Portland to Boston; that wool in grease, baled as provided in the tariff, takes a third class rate under the western classification; that under a commodity tariff filed by the complainant and various other lines connecting therewith, rates have been named on wool from various points in eastern Oregon over complainant's lines of railroad east of The Dalles to Boston and other eastern points; that the rates established by these tariffs are equal to or less than a combination of the third class rate fixed and established by tariff No. L-525 from said points in Oregon east of The Dalles to Portland, and the rate of $1 per hundred pounds fixed and established from Portland to Boston and other eastern points; that the third class rate fixed by said order from points in Oregon east of The Dalles to Portland added to the rate on wool from Portland to Boston, of $1 per hundred would be less in nearly every case than the legal rates from the same eastern Oregon points to Boston, as fixed in the tariffs referred to. It thus appears that, if the rates attempted to be fixed by the order should go into effect, complainants and other companies, concurring in the tariffs referred to, would be compelled to reduce the rates so established by such tariffs on such wool from points in eastern Oregon to Boston, Massachusetts, or otherwise the direct shipment

of wool from such points in eastern Oregon to Boston would cease, and such wool would be first transported to Portland and then reshipped to Boston, and complainant and other connecting lines would be subject to the risk and injury of having such wool shipped from Portland over lines competing with those of complainant in the carriage of wool from Portland to Boston.

Paragraph XXV (Rec. 19) alleges that the rates charged by complainant between Portland and The Dalles established by tariff L-525, are unreasonably low, made so by reason of water competition. That by the order of the Railroad Commission the rates to points east of The Dalles are based upon the rates charged by complainant between Portland and The Dalles, and the rate of increase of the rates to points east of The Dalles fixed by said order is unreasonably low and unjust to complainant, and has the effect of making such rates unreasonably low and unjust to complainant, and to some of the points east of The Dalles less than the rates to The Dalles; and therefore the order provided that the rates to points east of The Dalles might equal the present rates to The Dalles, when the application of the formula prescribed would reduce rates below the present rates between Portland and The Dalles. That the application of the present rates between Portland and The Dalles to points beyond The Dalles causes such rates beyond The Dalles to be unreasonably low and unjust to complainant.

That the order fixes rates upon complainant's branch lines the same for equal distances as upon its main line; that the cost of service upon each of said branch lines is much greater than upon the main line, the traffic is

less and the service rendered the public reasonably worth more than for corresponding distances upon the main line, so that the rates ordered upon complainant's branch lines are unreasonably low.

That by the order complainant would be permitted to charge but two cents more for transporting freight from Portland to Baker City than from Portland to La Grande upon first class freight; one cent more upon classes 2, 3, 4, 5, A and B, and nothing additional upon classes C, D and E, but that a difference is made in the rates to La Grande as compared with the rates to Pendleton of from five to twenty-five cents per hundred pounds upon the various classes, and a difference in rates to Pendleton as compared with the rates to Umatilla of from three to fifteen cents per hundred pounds. The distance from Portland to Umatilla is 186 miles, to Pendleton 230 miles, to La Grande 305 miles and to Baker City 356 miles. That the grades are so heavy between La Grande and Baker City, that the cost of operating a train from La Grande to Baker City is greater than in hauling a train upon a level grade; that between Pendleton and Umatilla there is no grade. It is alleged such adjustment of rates is arbitrary and unreasonable, and is founded upon no circumstances and conditions affecting the cost and value of the service, and that the entire basis of rates, and the rates fixed by said order, are arbitrary and unreasonably low and unjust and should be set aside, for the reason that said Commission had no power to establish arbitrary, unjust and unreasonable rates.

Paragraph XXV-a (Rec. 21) alleges that no adequate nor proper remedy is afforded for the protection

of complainant against the alleged injustice or unlawfulness of the tariff fixed by the order of the Railroad Commission, and that the penalties prescribed for the violation of the order are so severe and drastic as to render it confiscatory for complainant to attempt to litigate against an order or maintain its rights and have reasonable rates established affecting traffic upon its lines. The particular provisions complained of cover damages, attorney's fees, penalties, and provisions for review by the courts. It is alleged that by reason thereof the complainant is denied equal protection of the laws, and deprived of its property without due process of law.

Paragraph XXVI (Rec. 22) sets out Article III, Section 1, of the constitution of the state of Oregon, as follows:

> "The powers of the government shall be divided into three separate departments—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided."

It is then alleged that by the Act of the Legislative Assembly creating the Railroad Commission, there is conferred upon the defendants, as railroad commissioners, legislative, executive and judicial powers, and legislative and judicial powers, and legislative and administrative powers, and judicial and administrative powers in contravention of such constitutional inhibition. Examples are given as to what is alleged to be an uncon-

stitutional delegation of power. It is alleged that under Section 22, the Commission has power, if upon investigation of any existing rate or classification it shall determine it is unreasonable, to fix and substitute a rate or classification it determines to be just. It is alleged that the act of determining whether the rates should have been charged is a judicial act and the act of fixing and establishing a new rate for the future is a legislative act. It is alleged that Section 30, providing for the establishment and apportionment of a joint rate over different lines, constitutes both a legislative act and a judicial act. So also as to Section 28, providing for the construction, proper care and conduct of station houses.

Paragraph XXVII (Rec. 24) contains the usual allegations that the Commission and the Attorney General are threatening to put the tariff established by the Commission into effect, and to prosecute complainant, its officers, etc., for any disregard of the provisions thereof.

Paragraph XXVIII (Rec. 25) contains the usual averments to the effect that, if complainant shall fail to observe the order of the Commission, it will result in actions against complainant, or in criminal proceedings against its officers and employes, and in an endless number of actions at law and criminal proceedings; that complainant has no plain, speedy and adequate remedy at law, and the injury done and threatened is such that complaint will be wholly remediless unless the defendants and each of them be restrained from the enforcement of the act and of the order referred to. A preliminary injunction was sought and finally a decree was

prayed declaring the act creating the said Railroad Commission to be unconstitutional and void, and the order, attempted to be made under said act, unconstitutional and void in so far as it may affect the complainant.

The order of the Railroad Commission referred to in the complaint, and which is made a part of the complaint, will be found in full at page 182 of the record. We set out so much of the order as we deem material for the purpose of this argument, it being borne in mind that both this order and each and all of the exhibits were made a part of the complaint, and necessarily the facts therein set out are as much a part of the complaint as though alleged specifically in the body of the bill.

ORDER.

"The cause came on for hearing and investigation on the 4th day of November, 1907. At this hearing, and at all subsequent hearings the complainant was represented by Joseph N. Teal, its attorney, and the defendant was represented by W. W. Cotton, its attorney. A large amount of testimony was taken, and all of the issues presented and investigated very carefully.

After due investigation and consideration of all the facts presented, we have reached the conclusion and have determined that the class rates in issue in this proceeding now charged by the defendant company for the transportation of various commodities within this state are unjust and unreasonable, and should be reduced and find as follows:

First. That the defendant, The Oregon Railroad and Navigation Company is a cor-

poration duly organized and doing business under the laws of the State of Oregon, and is a public service corporation and a common carrier engaged in the transportation of passengers and property between points within the State of Oregon, and as such common carrier is subject to the provisions of the Act to Regulate Transportation and Commerce, etc., filed in the office of the Secretary of State of the State of Oregon, February 18, 1907; that a main line of the railway of the said defendant runs from the City of Portland, Multnomah County, Oregon, to the town of Huntington, in Baker County, in said state, and lies wholly within the State of Oregon.

Second. That the class rates now in effect under defendant's freight tariff effective January 1, No. L-525, O.R.C. No. 89, I. C. C. No. 1146, with supplements amendatory thereof, over and on said defendant company's main, branch, leased and otherwise controlled railroad lines within the state of Oregon, between the City of Portland and all points within said state on said lines of railroad east of the City of The Dalles in said state, are unjust and unreasonably high. Said tariff is based on existing Western Classification. That the defendant has established class rates between Portland and branch line points which generally are the same or lower for equal distance on the main line.

Third. That between the City of Portland, Oregon, and all points east of The Dalles, except where, under said tariff, the rates are now the same or less than are prescribed herein, the first-class rates now in effect under said tariff should be reduced by an amount equal to one-

sixth of the difference between twenty-five cents (the existing first class rate to The Dalles), and the existing first class rate to such point; and that all other class rates between Portland and points east of The Dalles, with the exception above noted, should be reduced and bear the same relation to the first class rate as is provided in the distance tariff of said defendant company, to-wit:

Classes	1	2	3	4	5	A	B	C	D	E
Per cent of first class	100	85	70	60	50	50	40	30	25	20

The rates on branch lines to be the same as on the main line for equal mileage. And that such rates are hereby determined to be just and reasonable rates for the transportation of the property and commodities covered by said tariff under said classes; and that present rates between Portland and any point in the State of Oregon under said tariff should not be exceeded on any class.

It is therefore ordered, considered and determined that the defendant company, The Oregon Railroad & Navigation Company shall cease and desist from charging any higher rates within this state for the transportation of merchandise and other commodities between the City of Portland and points on the defendant company's main, branch, leased or otherwise controlled railroad lines within the State of Oregon, covered by the class rates in said tariff No. L-525, O. R. C. No. 89, I. C. C. No. 1146, than the class rates prescribed in this order, and that said railroad company, in lieu of the rates herein ordered discontinued, shall substitute the following maximum rates;

Reduce first class rates (under present Western Classification) between Portland and

all points east of The Dalles (except where, under the existing tariff, the rates are now less than prescribed herein) by an amount equal to one-sixth of the difference between twenty-five cents (the existing first class rate to The Dalles) and the existing first class rate to such point, and reduce all other class rates between Portland and points east of The Dalles, with the exception above noted, so that they will bear the same relation to the first class rate as is provided in the distance tariff of said defendant railroad company, to-wit:

Classes	1	2	3	4	5	A	B	C	D	E
Per cent of first class	100	85*	70	60	50	50	40	30	25	20

The defendant shall apply such rates to the supplements to and reissues of the present Western Classification.

It is further ordered, considered and determined that the rates under the existing tariff shall not be exceeded on any class between any points covered by said tariff nor apply to or change any rate now in effect that is lower than the rates prescribed by this order; provided, the rates herein ordered may equal the present rates between Portland and The Dalles when the application of the formula herein prescribed would reduce the rates below the said present rates between Portland and The Dalles.

When the application of the formula produces a remainder of one-half cent or greater fraction the company shall be entitled to charge the whole cent, and when less than one-half cent the same shall be dropped.

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*Erroneously copied 35 in Record.

> The rates prescribed by the foregoing order shall be effective from and after twenty days after the service of a copy hereof on the defendants as required by law, and the defendant is given until twenty days after such service to prepare and file new tariffs in accordance with the provisions of this order."

The Railroad Commission Act of Oregon, as in effect at the time of bringing the suit, is set out in full, pages 111 to 160, both inclusive, of record. The controlling provisions of this act in so far as they may pertain to this controversy and considered in connection with the allegations of the complaint and as a part of it, are as follows:

It creates a Railroad Commission, to be composed of three persons elected by the people, but appointive until an election is held. Section 1 (Rec. 115).

The Commissioners shall be known collectively as "Railroad Commission of Oregon," and in that name may sue and be sued, etc. Section 7 (Rec. 117).

> "The term railroad, as used herein shall mean and embrace all corporations, companies * * that now, or may hereafter, own, operate by steam, electric or other motive power, manage or control, any railroad or interurban railroad, or part of a railroad or interurban railroad as a common carrier in this state, or cars or other equipment used thereon, or bridges, terminals, or side tracks, used in connection therewith, whether owned or operated under a contract, agreement or lease or otherwise. * * * The provisions of this act shall apply to the transportation of passengers and property, and to all railroad

companies, etc., that shall do business as common carriers upon or over any line of railroad within this state." Section 11 (Rec. 118).

Every railroad is required to furnish reasonably adequate service, equipment and facilities, and the charges made for any service rendered or to be rendered in the transportation of passengers or property or for any service in connection therewith, * * shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. Section 12 (Rec. 119).

Every railroad is required to print and file with the Commission a schedule of its rates and joint rates existing between all points in this state upon its lines, or any line controlled or operated by it. Section 13 (Rec. 119).

Changes in schedules are to be made only upon notice and filing of copies of new schedules with the Commission. Section 14.

> "It shall be unlawful for any railroad to charge, demand, collect or receive a greater or less compensation for the transportation of passengers or property or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, and the rates, fares and charges named therein shall be the lawful rates, fares and charges until the same are changed as herein provided." Section 16 (Rec. 121).
>
> "There shall be but one classification of freight in the state, which shall be uniform on all railroads." Section 20 (Rec. 121).

"All railroads shall, at all points of connection crossings or intersection with the roads of other railroads, unite therewith in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other; and for the transfer of passengers, baggage or freight, whenever the same shall be ordered by the railroad commission; and shall, when ordered by it, keep such depot or passenger house warmed, lighted and opened a reasonable time before the arrival and until after the departure, of all trains carrying passengers; and said railroads shall stop all trains at said depots for the transfer of passengers, baggage and freight when so ordered by the commission. Such railroads whose roads so connect or intersect shall, when ordered by the commission, so unite and connect the tracks by the several roads as to permit the transfer of cars from the track of one to that of the other. The expense of constructing and maintaining such station houses, platforms and track connections, shall be paid by such railroads in such proportions as may be fixed by the commission, in the event such railroads do not agree between themselves as to the apportionment thereof." Section 23 (Rec. 123).

"Upon complaint of any person, * * that any of the rates, fares, charges or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property, or any service in connection therewith, are in any respect unreasonable or unjustly discriminatory, or that any service is in-

adequate, the commission may notify the railroad complained of that complaint has been made, and ten days after such notice has been given, the commission may proceed to investigate the same as hereinafter provided. Before proceeding to make such investigation the commission shall give the railroad and the complainant ten days' notice of the time and place and when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. If upon such investigation the rate or rates, fares, charges or classifications, or any joint rate or rates, or any regulation, practice or service complained of shall be found to be unreasonable or unjustly discriminatory, or the service shall be found to be inadequate, the commission shall have power to fix and order substituted therefor such rate or rates, fares, charges or classifications as it shall have determined to be just and reasonable and which shall be charged, imposed and followed in the future, and shall also have the power to make such orders respecting such regulations, practice or service as it shall have determined to be reasonable, and which shall be observed, followed, used and supplied in the future. * *

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Whenever the commission shall believe that any rate or charges may be unreasonable or unjustly discriminatory, or that any service is inadequate, and that an investigation relating thereto should be made, it may on its own motion investigate the same. If, after making

such investigation, the commission becomes satisfied that sufficient grounds exist to warrant a hearing ordered to determine whether the rate so investigated [is] unreasonable or unjustly discriminatory, or whether the service investigated is inadequate, it shall furnish the railroad or railroads interested a statement setting forth the rate or service investigated, which said statement shall be accompanied by a notice fixing a time and place for hearing on such rate or service, as the case may be. Notice may likewise be given to other parties in interest, and shall be given at least ten days in advance of any hearing, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint was filed with the commission relative to the matter investigated, pursuant to the provisions of this section, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

This section shall be construed to permit any railroad to make complaint with like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization. * * *" Section 28 (Rec. 129).

"Whenever, upon an investigation made under the provisions of this Act, the commission shall find any existing rate or rates, fares, charges, or classifications, or any joint rate or rates, or any regulation or practice whatsoever affecting the transportation of persons or property, or any service in connection therewith, are unreasonable or unjustly discriminatory, or

any service is inadequate, it shall determine and by order fix a reasonable rate, fare, charge, classification, or joint rate to be imposed, observed, and followed in the future in lieu of that found to be unreasonable or unjustly discriminatory, or inadequate, as the case may be, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the railroad affected thereby, which order shall, of its own force, take effect and become operative twenty days after the service thereof. All railroads to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any railroad in any such rates, fares, or charges, or in any joint rate, or rates, without the approval of the commission. * *

The commission may, at any time, upon notice to the railroad, and after opportunity to be heard as provided in section 28, rescind, alter or amend any order fixing any rate or rates, fares, charges, or classification, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders."

Provision is made for the ascertainment of joint routes and rates and their apportionment, in like manner. Section 30 (Rec. 133).

"All rates, fares, charges, classifications and joint rates fixed by the commission shall be in force and shall be *prima facie* lawful, and all regulations, practices, and service prescribed by the commission shall be in force and

shall be *prima facie* reasonable, until finally found otherwise in an action brought for that purpose pursuant to the provisions of sections 32, 33, 34 and 35 of this Act." Section 31 (Rec. 133).

"Any railroad * * interested in or affected by any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or service, being dissatisfied therewith, may commence a suit in the circuit court of Marion County against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates * * fixed in such order, are unlawful, or that any such regulation, practice or service prescribed or fixed in such order is unreasonable. * * The commission shall serve and file its answer to said complaint within ten days after the service thereof, whereupon said suit shall be at issue and stand ready for trial upon ten days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in said court, and the circuit court shall always be deemed open for the trial thereof, and the same shall be tried and determined as a suit in equity.

In all trials under this section, and sections 33, 34 and 35 thereof, the burden of proof (shall) be upon the plaintiff to show by clear and satisfactory evidence that the order of the commission complained of is unlawful, or unreasonable, as the case may be." Section 32 (Rec. 134).

"No injunction shall issue suspending or staying any order of the commission except

upon application to the circuit court or presiding judge thereof, notice to the commission, and hearing, and upon the giving of such bond or other security and upon such conditions as the court may require; and if such order of injunction suspends the order or requirement of the commission fixing rates, then the court shall require a bond with good and sufficient surety conditioned that the railroad or railroads applying for such injunction shall answer for all damages caused by the delay in the enforcement of the order of the commission and all penalties that would attach against the said railroad and all compensation for whatever sums for transportation service any person or corporation shall be compelled to pay in excess of the sums such person or corporation would have been compelled to pay if the order of the commission had not been suspended; and such bond shall cover the periods transpiring from time of the issuance of any such injunction until the final determination of the question litigated. The said bond shall be executed in favor of the Railroad Commission of Oregon for the benefit of whom it may concern and shall be enforceable by said commission or any person interested in an appropriate proceeding. Any person paying charges found to be excessive shall have a claim for the excess, whether paid under protest or not, and unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such railroad, or such railroad and the sureties on such bond. Claims of persons for money collected in excess of the amount payable under the rate or rates established by the commission shall be assignable

in the same manner as any chose in action. No appeal to the Supreme Court shall stay the operation of any order of the commission unless the circuit or Supreme Court shall so direct, and unless the railroad so appealing shall give a bond with like conditions and terms as that given on granting injunctions suspending an order of the commission fixing rates." Section 33 (Rec. 134).

In order that the Court may be fully advised as to the exact condition of this act, it will be noted this section was amended prior to the rendition of the decree appealed from. Section 33 as amended is printed as an appendix to this brief.

"If, upon the trial of such suit, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or additional thereto, the court before proceeding to render judgment, unless the parties to such suit stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, fares, charges, classification, joint rate or rates, regulation, practice, service or equipment complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the suit shall be dismissed; if it shall alter, modify or amend the same, such

altered, modified or amended order shall take the place of the original order complained of, and judgment or decree shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order." Section 34 (Rec. 135).

"Either party to said suit, within sixty days after the entry of the judgment or decree of the circuit court, may appeal to the Supreme Court. Where an appeal is taken the cause shall, on the return of the papers to the Supreme Court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar, but shall have precedence over civil causes of a different nature pending in said court." Section 35 (Rec. 135).

"The commission shall have power, and it is hereby made its duty to investigate all freight rates on interstate traffic on railroads in this state, and when the same are, in the opinion of the commission, excessive or discriminatory or are levied or laid in violation of the interstate commerce law, or in conflict with the rulings, orders or regulations of the Interstate Commerce Commission, the commission shall present the facts to the railroad, with a request to make such changes as the commission may advise, and if such changes are not made within a reasonable time the commission shall apply by petition to the Interstate Commerce Commission for relief. All freight tariffs issued by any such railroad relating to interstate traffic in this State shall be

filed in the office of the commission within thirty days after the passage and publication of this act and all such tariffs thereafter issued shall be filed with the commission when issued." Section 47 (Rec. 140).

"If any railroad shall do or cause to be done or permit to be done any matter, act or thing in this Act prohibited, or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such railroad shall be liable to the person, firm, or corporation injured thereby in treble the amount of damages sustained in consequence of such violation together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case; provided, that any recovery as in this section provided, shall in no manner affect a recovery by the State of the penalty prescribed for such violation * *." Section 51 (Rec. 141).

"Any officer, agent or employe of any railroad who shall fail or willfully refuse to fill out and return any blanks as required by this Act, or shall fail or refuse to answer any questions therein propounded, or shall knowingly or willfully give a false answer to any such question, or shall evade the answer to any such question, where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or willfully refuse to exhibit to the commission or any commissioner, or any person authorized to examine the same, any book, paper or account of such railroad, which is in his possession or under his control, shall be deemed guilty of a misdemeanor, and upon

conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each such offense; and a penalty of not less than five hundred dollars nor more than one thousand dollars, shall be recovered from the railroad for each such offense when such officer, agent or employee acted in obedience to the direction, instruction or request of such railroad or any general officer thereof." Section 52 (Rec. 141).

"If any railroad shall violate any provision of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement, order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure or refusal, such railroad shall forfeit and pay into the State treasury a sum of not less than one hundred dollars, nor more than ten thousand dollars, for such offense. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent, or other person acting for or employed by any railroad, acting within the scope of his employment, shall in every case be deemed to be the act, omission or failure of such railroad.

All penalties, fines or forfeitures, or other sums collected or paid, under the provisions of this act, shall be paid into the general fund of the State treasury, except where it is provided the same shall be paid to the aggrieved party." Section 58 (Rec. 142).

"The commission shall have power when deemed by it necessary to prevent injury to the business or interests of the people or railroads of this State in consequence of interstate rate wars, or in case of any other emergency to be judged of by the commission to temporarily alter, amend, or with the consent of the railroad company concerned, suspend any existing passenger rates, freight rates, schedules and orders of any railroad or part of railroad in this State. Such rates so made by the commission shall apply on one or more of the railroads in this State or any portion thereof as may be directed by the commission, and shall take effect at such time and remain in force for such length of time as may be prescribed by the commission." Section 54 (Rec. 142).

"Whenever, after hearing and investigation as provided by this act, the commission shall find that any charge, regulation, or practice affecting the transportation of passengers or property, or any service in connection therewith, not hereinbefore specifically designated, is unreasonable or unjustly discriminatory, it shall have the power to regulate the same as provided in sections 28 and 30 of this act." Section 55 (Rec. 143).

"The commission shall inquire into any neglect or violation of the laws of this state by any railroad corporation doing business therein, or by the officers, agents, or employes thereof, or by any person operating a railroad, and shall have the power, and it shall be its duty, to enforce the provisions of this act as well as all other laws relating to railroads and report all violations thereof to the Attorney-General; upon the request of the commission

it shall be the duty of the Attorney-General or the prosecuting attorney of the proper county to aid in any investigation, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act or the recovery of penalties payable to the state, and of all other laws of this state relating to railroads, and for the punishment of all violations thereof. Any forfeiture or penalty herein provided shall be recovered by an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction." * * * Section 57 (Rec. 143).

"A substantial compliance with the requirements of this act shall be sufficient to give effect to all the rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. The provisions of this act shall be liberally construed with a view to the public welfare, efficient transportation facilities, and substantial justice between shippers and passengers and railroads." Section 59 (Rec. 144).

"This act shall not have the effect to release or waive any right of action by the state or by any person for any right, penalty or forfeiture which may have arisen or which may hereafter arise under any law of this state; and all penalties and forfeiture accruing under this act shall be cumulative and a suit for, and recovery of one, shall not be a bar to the recovery of any other penalty." Section 60 (Rec. 144).

It is impracticable and unnecessary to reprint the various tariffs forming part of the complaint, but they will be referred to on argument.

DEMURRERS TO THE BILL.

To this bill of complaint defendants interposed demurrers. (Rec. 34 to 37). The general demurrer was in usual form for that it appears upon the face of the bill (1) that the court has no jurisdiction of the subject matter of the controversy; (2) that complainant is not entitled to the relief prayed, against any of the defendants; (3) that it does not state a case that entitles it to the relief sought, and (4) that complainant has an adequate remedy at law.

A separate demurrer was filed to paragraphs VI to XIII inclusive, and to each of them, and XV to XXVIII inclusive, upon the grounds (1) that it appears from the facts set forth in each of said paragraphs and in all of them, that complainant is not entitled to the relief or any part thereof, prayed for from or against these defendants, or any of the defendants, and (2) that the facts as set forth in each of said paragraphs and all of them, do not state a cause of suit, or any part of a cause of suit, against these defendants, or any of the defendants.

The demurrer was sustained (except upon the question of jurisdiction) and the motion of complainant for a preliminary injunction was denied. The restraining order, however, was continued in force pending an application by complainant for leave to amend its bill of complaint. (Rec. 38).

ALLEGATIONS OF THE AMENDMENT TO THE BILL OF COMPLAINT.

An amendment to the bill of complaint was thereafter filed. (Rec. 77).

Paragraph II of said amendment (Rec. 77), in substance alleges that of the freight carried on complainant's lines in Oregon from Portland east of The Dalles under class rates established by tariff No. L-525, at least 40 per cent originates out of Oregon, has been, and will be shipped from Portland to points east of The Dalles in the same packages in which it was originally shipped from the eastern point of origin to Portland, and without coming to rest within Oregon, and without becoming part of the traffic of the state of Oregon; and at least 20 per cent of the freight carried and to be carried, over complainant's lines in Oregon east of The Dalles, under said tariff, has been and will be shipped from Portland to such points by carriers and persons bringing the same to Portland from points without Oregon, with the intention of immediately shipping the same over complainant's lines from Portland to points in Oregon east of The Dalles, and the same has been, and will be so brought into Oregon and so shipped over the lines of complainant from Portland to Eastern Oregon points, and that the class rates established by the order of the commission apply to all of the freight mentioned in the amendment.

Paragraph III (Rec. 78) alleges that Section 1 of the commission act requires the charges made for the transportation of property shall be reasonable and just, and that this provision is the only limitation fixed by

the state or by any legislation thereof upon the right of complainant to make charges for its service as a common carrier; that complainant is the owner and operator of the railroads owned by it, is entitled to the possession, management and beneficial use thereof, and is authorized to establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable.

The substance of Sections 30, 48, 31 and 32 of the railroad commission act is then set out. (The sections have been previously quoted in this statement.) It is further alleged that the rates fixed by tariff L-525 from Portland to points in Oregon east of The Dalles are, have been and will be for a period of more than three years hence low, just and reasonable rates for transportation between said places, and the rates prescribed by the railroad commission's order have been and will be for more than three years hence, unjust and unreasonable for the transportation of freight now carried under the class rates established and fixed by tariff L-525 from Portland to said points in Oregon.

That by the fourteenth amendment to the constitution of the United States complainant has a right to a judicial investigation in a court by due process of law under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy of the question as to the reasonableness of the rates so fixed and established by complainant and of the reasonableness of the rates fixed and established by the commission. By Section 1 of Article VII of the constitution

of Oregon all the judicial power of the state is vested in a Circuit Court and County Courts; that the railroad commission is not one of said courts and cannot and does not exercise any judicial powers or conduct any judicial investigation.

The attempt of the commission by said order to set aside and annul the rates established by complainant and the establishment of the rates prescribed by said order against the will of complainant is *pro tanto* the taking of the property of the complainant and depriving it thereof without due process of law in violation of the fourteenth amendment to the constitution of the United States, and the making of said order of the commission was *pro tanto* a taking and depriving complainant of its property without due process of law in violation of said Article XIV, and is thereby void and of no effect.

These allegations were followed by the usual prayer.

DEMURRERS TO THE AMENDED BILL.

A demurrer to the complaint and demurrers to portions of the bill of complaint as amended were interposed by the defendants (Rec. 81 to 85 inclusive), which were in substance and form the same as those interposed to the original complaint. (Rec. 81, 85).

The demurrers were sustained, and thereafter the bill of complaint and amended complaint were dismissed and the restraining order vacated (Rec. 89).

It will be noted that by the amendment to the complaint the question was attempted to be presented as to whether goods shipped into Portland from outside the state in original packages and sooner or later

shipped out again to the interior of the state, in the same unbroken packages, would constitute interstate commerce. The court held that, if an attempt was made to exact the state rate upon interstate traffic such attempt might be enjoined in any court of competent jurisdiction, but that these special cases must necessarily be determined as they arose, as it was impossible to determine in advance what specific commodities and the transportation thereof constitute interstate and what intrastate commerce.

BILL OF INTERVENTION OF W. S. SMALLWOOD.

Thereafter this question arose directly when W. S. Smallwood on leave filed his bill of intervention against complainant to secure an order directing the payment of certain claims growing out of alleged overcharges. The petition will be found in the Record 90 to 95 inclusive. Three claims were presented. The first claim arose on a shipment from Portland, Oregon, to La Grande, Oregon. The facts are as follows:

> "X. Goods, wares and merchandise purchased by Allen & Lewis in states other than Oregon to become a part of its common stock in trade at Portland, Oregon, and were billed and transported to the said point of destination, to-wit: Portland, Oregon, by various means of carriage both water and rail, and on arrival at said city said Allen & Lewis surrendered the bills of lading therefor, paying the freight thereon, took possession of the same and same were taken in original packages by the said Allen & Lewis to its warerooms and became a part of the common stock in trade carried by it for sale in said City of Portland,

Oregon, and there held an indefinite period for sale, and were thereafter sold from the said stock in said city in the original packages, as received by the said Allen & Lewis, and transported to La Grande, Oregon, in said packages by the complainant." (Rec. 92).

The second claim was based upon the following facts:

"XII. Said sugar so shipped was a portion of a lot of sugar purchased in California by said Allen & Lewis to become a part of its common stock in trade at Portland, Oregon, and was billed and transported to its said point of destination, to-wit: Portland, Oregon, by water by the Richardson steamship line, an independent water carrier not under common control or management by or with the complainant and having no joint tariffs, through rates, arrangements, or connections with the complainant for continuous carriage or shipment or otherwise. On arrival at said city said Allen & Lewis surrendered the bills of lading therefor, paid the freight thereon, took possession of the same and the same was taken in original packages by said Allen & Lewis to its store and warehouse and became a part of its common stock in trade carried by it for sale and there held an indefinite period for sale and was thereafter shipped from its said stock in Portland, Oregon, in the original packages as received by said Allen & Lewis and transported to La Grande, Oregon, in said packages by the complainant and delivered to said Oliver, who held the same for the account of and subject to the order of said Allen & Lewis." (Rec. 93).

The third claim was based upon the following facts:

"XIV. Said sugar was purchased in the State of California by said Lang & Co. for future sale by it at Portland, Oregon, with the intention of shipping it from Portland to some point within the State of Oregon. Said sugar was sold and billed to Lang & Co. and transported to Portland, Oregon, its point of destination, by the Richardson steamship line, an independent water carrier not under common control or management by or with the complainant and having no joint tariffs, through rates, arrangements or connections with the complainant for continuous carriage or shipment or otherwise. On arrival of the sugar at said City of Portland, said Lang & Co. surrendered its bill of lading therefor, paid the freight charges thereon and took possession of the same in the original packages as shipped from San Francisco. Thereupon said sugar was insured against loss by fire by Lang & Co. in its own name and as owner thereof while in warehouse at Portland, Oregon, and was held by said Lang & Co. in warehouse until sold and cars supplied for loading and the same was sold after its arrival at Portland, Oregon, to said Baker City Grocery Company by Lang & Co. at Portland, Oregon, reshipped from said city by Lang & Co. to said Baker City Grocery Company at Baker City, Oregon, over the lines of the complainant under a bill of lading issued to said Lang & Co. therefor, and was transported by complainant under said bill of lading in the original packages to Baker City, Oregon, and there delivered by complainant to said Baker City Grocery Company, the

consignee named in said bill of lading, and the charges collected thereon from said Baker City Grocery Company for transportating the same from Portland to Baker City.

"Intervenor alleges that each and all of said shipments was and were intrastate shipments and as such were subject to be transported under the rates prescribed by the railroad commission of Oregon, as in its order hereinbefore referred to and set out." (Rec. 94).

No answer or other pleading was filed by appellant and the petition was heard on the facts as alleged. The court held that the shipments in question were intrastate commerce and directed payment of the overcharges. (Rec. 96 to 101 inclusive).

Thereafter complainant filed its petition for appeal. (Rec. 101).

ASSIGNMENT OF ERRORS.

The first five assignments are in usual form, that the court erred in its order sustaining the demurrers, general and to specific portions of the original and amended bills of complaint. The sixth assignment is that the court erred in holding the order of the commission was not a regulation of interstate commerce or repugnant to the commerce clause of the constitution. The remaining assignments are:

"7. That the said court erred in holding and deciding that the fines and penalties prescribed by the act of the legislature of Oregon, establishing the said railroad commission of Oregon, and prescribing certain fines and penalties for the violation of the provisions of

said act, were not exorbitant or drastic, and did not deprive the complainant of the equal protection of the laws and subject its property to be taken without due process of law, in violation and contravention of the constitution of the United States.

"8. That the said court erred in holding and deciding that the order of the railroad commission of Oregon sought to be enjoined did not prevent the complainant from making fair net earnings on the services involved, and did not deprive the complainant of its property without due process of law.

"9. Said court erred in holding and deciding that the rates established by the order of the railroad commission of Oregon sought to be enjoined are reasonable, just and fair.

"10. That the said court erred in holding and deciding that the act of the legislature of Oregon establishing the railroad commission of Oregon and prescribing its duties, did not confer upon the said commission legislative, executive and judicial functions in violation of the constitution of the State of Oregon.

"11. That the said court erred in signing and entering the judgment and decree in favor of the defendants and against the complainant, dismissing this cause and suit, and giving judgment in favor of the defendants and against the complainant for costs." (Rec. 103 and 104).

ARGUMENT

THE QUESTION INVOLVED.

Under the bill of complaint, as amended, the following questions are presented and sought to be presented:

1. That the act creating the railroad commission of Oregon is, and the powers granted thereby, are violative of the constitution of the state of Oregon, in that the act attempts to confer executive, legislative and judicial powers upon said commission.

2. That the act is in violation of the constitution of the United States and particularly Article XIV of the amendments thereof, because of the excessive penalties imposed for its violation, thus depriving appellant of the equal protection of the laws, and that appellant's property is liable to be taken without due process of law.

3. That no adequate remedy for review of the orders of the commission is provided by law and appellant may be deprived of its property without due process of law in violation of the fourteenth amendment.

4. That the commission act and order of the railroad commission of Oregon interfere with and regulate interstate commerce.

5. That if enforced the order will prevent appellant from making fair net earnings on its investment and is *pro tanto* a taking and depriving the appellant of its property against its will and without due process of law.

6. That the rates established by the order are unreasonably low.

7. That appellant has a right under the fourteenth amendment to a judicial investigation in a court by due process of law, as to the reasonableness of the rates as established by it and as established by the railroad commission of Oregon under its order.

Certain of these questions will be determined by the court under the law; others as presented are mixed

tions of law and fact, and others presumptively deal with questions of fact.

Whether the bill of complaint states facts necessary to maintain the issues attempted to be presented, or presents any real issues of fact, will be determined by an examination of the bill.

APPELLEES' CONTENTION.

Briefly stated, the contention of appellees, as representing the state of Oregon, is substantially as follows:

A. The power of the state in all matters affecting intrastate commerce is supreme, subject only to constitutional guaranties for the protection of property rights.

B. The state may pursue such constitutional methods as it may desire to effectuate this control. It may establish rates and regulations to be charged and enforced by common carriers in connection with intrastate traffic by the direct action of the legislature or through an administrative body.

C. The act of the legislative assembly creating the railroad commission of Oregon is and the powers thereby granted are constitutional.

D. The findings and conclusion of the commission in determining and fixing a reasonable rate to be charged in the future for the transportation of freight are not subject to review by the courts, except upon constitutional grounds.

E. In passing upon an order of the commission fixing reasonable rates to be charged in the future, a court will not substitute its judgment for that of the commission as to the reasonableness of the rate in the

ordinary meaning of the word, but as to whether the rates fixed are unreasonable from a constitutional standpoint, i. e., confiscatory.

F. Appellant should pursue its remedy in the state courts before resorting to the injunctive process of the federal courts.

G. Under the law all presumptions are in favor of an order made by a duly authorized administrative tribunal.

H. No issuable fact is presented by general allegations such as "the rates fixed are unreasonably low," "that a large loss in net revenue will result from the enforcement of the order," and the like, nor does a demurrer admit the truth of such allegations. To tender issues of fact a complaint must contain full, accurate, clear and distinct statements of ultimate facts.

I. The interference with interstate commerce that is condemned is a direct interference.

J. The statute and order regulate and attempt to regulate intrastate commerce only and do not unduly or unlawfully interfere with interstate commerce.

DOES THE ORDER COMPLAINED OF AFFECT INTERSTATE COMMERCE?

There can be no disguising the fact that the alleged interference with interstate commerce is the real gravamen of the complaint. The bill is not framed upon the theory that any discrimination against interstate commerce results from the order.

Reduced to a sentence, the basis of the claim lies in the fact that in some instances local rates over the lines of the appellant, from Portland to points in Oregon and

elsewhere, are used in arriving at a through interstate rate. This is due to the tariff rules of the appellant, which to some extent are induced by the fact that Portland is a rail and water terminal. Based on this fact it is alleged that changes in local rates affect through interstate rates, and thus such change or order making them is an undue interference with interstate commerce.

In other words, that intrastate rates in Oregon can never be changed without the consent of the railroad, because a through interstate rate may base on some point within the state.

Before discussing the facts as alleged in the bill, we will first direct attention to the power of the state over domestic commerce.

THE STATE HAS EXCLUSIVE JURISDICTION OVER ITS INTERNAL COMMERCE.

It must be conceded that the power of the state to regulate intrastate commerce is as broad as the power of Congress to regulate interstate commerce. The state cannot regulate interstate commerce, and Congress cannot regulate intrastate commerce.

This is the principle underlying *Howard v. Illinois Central R. Co.*, 207 U. S. 468.

Each sovereignty has the right to exercise its authority over the commerce subject to its jurisdiction. At times there is necessarily some interference one with another, but if such result is merely an indirect or incidental interference with the subject matter under control of the other, it is not a violation of the constitution. The act is legal unless the sovereign enacting it has, in

so doing, asserted authority or jurisdiction over the matter not subject to its jurisdiction.

The interference with interstate commerce that is forbidden is a direct interference. In most of this class of cases the point has been made that the act complained of was an interference with interstate commerce, but it has been rarely sustained. The regulation of domestic commerce is as exclusively a state function as the regulation of interstate commerce is a federal function.

Milnor v. New Jersey R. Co., 17 Fed. Cases, 63.

Ex Parte Koehler, 30 Fed. 867.

Allen & Lewis v. O. R. & N. Co., 106 Fed. 269.

St. Louis & S. F. R. Co. v. Hadley, 168 Fed. 117.

Woodside v. Tonopah & G. R. Co., 184 Fed. 80.

Louisville & N. R. Co. v. Siler, 186 Fed. 176.

In re Arkansas Rate Cases, 187 Fed. 200.

Southern Pacific Co. et al. v. Campbell et al., — Fed. —

Gibbons v. Ogden, 9 Wheat. 195.

United States v. Chicago etc. R. Co., 149 Fed. 486.

Ex Parte Plessy, 45 La. Ann. 80, 87.

Sands v. Manistee R. Imp. Co., 123 U. S. 28.

Willamette Bridge Co. v. Hatch, 125 U. S. 1.

Wabash, St. L. & P. Co. v. Illinois, 118 U. S. 557.

Luxton v. North Bridge Co., 153 U. S. 525.

Geer v. Connecticut, 161 U. S. 519, 531.

Addyston Pipe & S. Co. v. U. S., 175 U. S. 211, 247.

Erie Railroad Company v. Purdy, 185 U. S. 148, 150.

Atlantic C. L. v. N. C. Com., 206 U. S. 1.

Howard v. Ill. Central Ry. Co., 207 U. S. 463.

People v. Butler Street Foundry etc. Co., 201 Ill. 236, 250.

Attorney General v. Old Colony R. Co., 160 Mass. 62.

Chicago etc. Ry. Co. v. R. R. Com., 178 Ind. 469.

Central Trust Co. v. R. R. Co., 101 N. Y. Sup. 887.

Larabee v. Mo. Pac. R. Co., 74 Kans. 808.

State v. Jack, 69 Kans. 887.

Beardsley v. New York, L. E. & W. R. Co., 15 App. Div. (N. Y.) 251.

Purdy v. Erie R. Co., 162 N. Y. 42; appeal dismissed, 185 U. S. 148.

New Jersey Fruit Exc. v. R. R. Co., 2 Inters. Com. Rep. 84, 86; 2 I. C. C. Rep. 142.

Hastings etc. Co. v. R. R. Co., 11 I. C. C. Rep. 675, 682.

Farmers' etc. Club v. R. R. Co., 12 I. C. C. Rep. 351, 355.

Railroads are subject as to their state business to state regulations, which may be exerted directly by the legislative authority or by administrative bodies endowed with power to that end.

Calvert, Regulation of Commerce, p. 75.

Beale & Wyman, Railroad Rates, Section 1307.

Noyes, American Railroad Rates, 206.

Cooke on the Commerce Clause of the Federal Constitution, Section 28.

Chicago etc. R. Co. v. Iowa, 94 U. S. 155.

Railroad Commission Cases, 116 U. S. 307.

Wabash, St. Louis, P. R. R. Co. v. Illinois, 118 U. S. 557.

Georgia R. etc. Co. v. Smith, 128 U. S. 174.

C. M. & St. P. R. Co. v. Minnesota, 134 U. S. 418.

Chicago etc. Co. v. Wellman, 143 U. S. 339.

Covington etc. Bridge Co. v. Kentucky, 154 U. S. 204.

Reagan v. Merc. Trust Co., 154 U. S. 413.

St. Louis v. Gill, 156 U. S. 649.

Smyth v. Ames, 169 U. S. 466.

Dinsmore v. Southern Express Co., 183 U. S. 115.

New Mexico ex rel. McLean v. Denver & Rio Grande R. Co., 203 U. S. 38.

Ware & Leland v. Mobile Co., 209 U. S. 405.

Gulf, Col. & S. F. Ry. Co. v. Texas, 204 U. S. 403.

Atlantic Coast Line v. N. C. Corp. Com., 206 U. S. 1.

General Oil Co. v. Crain, 209 U. S. 211.

State v. Mo. Pac. Ry. Co., 76 Kans. 467; affirmed 216 U. S. 262.

Southern Railway Co. v. Hunt, 42 Ind. App. 90.

Commissioner of Railroads v. Wabash R. Co., 128 Mich. 669; affirmed 126 Mich. 118.

In *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, at page 393, the court says:

> "Passing from the question of jurisdiction of the act itself, there can be no doubt of the general power of a state to regulate the fares and freights which may be charged and received by railroad or other carriers, and that this regulation can be carried on by means of a commission. Such commission is merely an administrative board created by the state for carrying into effect the will of the state as expressed by its legislation. *Stone v. Farmers' Loan & Trust Co.* (Railroad Commission Cases), 116 U. S. 307. No valid objection, therefore, can be made on account of the general features of this act; those by which the state has created the railroad commission and entrusted it with the duty of prescribing rates of fares and freights as well as other regulations for the management of the railroads of the state."

In *Smyth v. Ames, supra*, at page 521, the court says:

> "It cannot be doubted that the making of rates for transportation by railroad corporations along public highways between points wholly within the limits of a state is a subject primarily within the control of that state."

In *Atlantic C. L. R. Co. v. North Carolina Corporation Co., supra,* Mr. Justice White, speaking for the court, says (page 19):

> "The elementary proposition that railroads, from the public nature of the business by them carried on, and the interest which the public have in their operation, are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end is not and could not be successfully questioned in view of the long line of authorities sustaining the doctrine."

Mr. Justice Day, in *New Mexico ex rel. McLean v. Denver & Rio Grande R. Co., supra,* at page 49, said for the court:

> "It has been too frequently decided by this court to require the re-statement of the decisions, that the exclusive power to regulate interstate commerce is vested by the constitution in Congress, and that other laws which undertake to regulate such commerce or impose burdens upon it are invalid. This doctrine has been reaffirmed and announced in cases decided as recently as the last term of this court. *Houston & T. C. R. Co. v. Mayes,* 201 U. S. 321; *McNeill v. Southern R. Co.,* 202 U. S. 543. While this is true, it is equally well settled that a state or a territory, for the same reasons, in the exercise of the police power, may make rules and regulations not conflicting with the legislation of Congress upon the same subject, and not amounting to regulations of interstate commerce. It will only be necessary to refer to a few of the many cases decided

in this court holding valid enactments of legislatures having for their object the protection, welfare, and safety of the people, although such laws may have an effect upon interstate commerce. *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, 685; *Chicago, M. & St. P. R. Co. v. Solan*, 169 U. S. 133; *Pennsylvania R. Co. v. Hughes*, 191 U. S. 477. The principle decided in these cases is that a state or territory has the right to legislate for the safety and welfare of its people, and that this right is not taken from it because of the exclusive right of Congress to regulate interstate commerce, except in cases where the attempted exercise of authority by the legislature is in conflict with an act of Congress, or is an attempt to regulate interstate commerce."

Mr. Justice White (with him concurring Chief Justice Fuller, and Justices Peckham and Holmes), said in 193 U. S. 394 in the *Northern Securities* case:

"Where an authority is exerted by a state which is within its power, and that authority as exercised does not touch interstate commerce or its instrumentalities, and can only have an effect upon such commerce by reason of the reflex and remote results of the exertion of the lawful power, it cannot be said, without a contradiction in terms, that the power exercised is a regulation, because a direct burden upon commerce. *To say to the contrary would be to declare that no power on any subject, however local in its character, could be exercised by the states if it was deemed by Congress or the courts that there would be produced some effect upon interstate commerce.* The question whether a burden is direct and therefore con-

stitutes a regulation of interstate commerce is to be determined by ascertaining whether the power exerted is lawful, generally speaking, and then by finding whether its exercise in the particular case was such as to cause it to be illegal, because directly burdening interstate commerce. If in a given case the power be lawful and the mode in which it is exercised be not such as to directly burden, there is no regulation of commerce, although as an indirect result of the exertion of the lawful power some effect may be produced upon commerce. In other words, where the power is lawful but it is asserted that it has been so exerted as to amount to a direct burden, *there must be, so to speak, a privity, between the manifestation of the power and the resulting burden.*"

In the case of *Oklahoma v. A. T. & S. F. R. Co.* 31 Sup. Ct. Rep. 484, 220 U. S. 277, the Supreme Court again passed upon the question of the power of a state to regulate intrastate rates. Prior to the admission of Oklahoma as a state Congress granted to the Southern Kansas Railway Co. of Kansas the right to construct a railroad line through the Indian Territory. The act forbade the company to charge the inhabitants of the territory a greater rate of freight than the rate authorized by the laws of the state of Kansas for services or transportation of the same kind, and fixed the passenger rates at not to exceed three cents per mile. The law containing this proviso was to be effective "until a state government or governments shall exist in said territory, within the limits of which said railway or a part thereof shall be located; and then such state government or governments shall be authorized to fix and regulate the cos

of transportation of persons and freights within their respective limits by said railway." Congress reserved the right to fix and regulate the transportation between the states. The grant was accepted by the railway, which is now a part of the Atchison, Topeka & Santa Fe. The state brought a suit, claiming that the railroad had continuously violated the condition, and asked that the grant given this line be decreed to be in the state of Oklahoma *as cestui que trust*, and that the railway be enjoined and restrained from charging a greater rate of freight than that authorized by the laws of Kansas, etc. In discussing it the court said, at page 435 of the Reports: "While the *territorial* conditions lasted, the governmental power of Congress over the territory and its inhabitants was exclusive," etc. The court then points out that the regulations prescribed by the act were to exist until a state government was created, and then the state government should have the authority to fix and regulate fares and freight. The court then held (page 435) that when Oklahoma was organized as a state and admitted into the Union "on an equal footing with the original states," the federal act necessarily ceased to be in force in the state and the whole subject of said rates in domestic or local business passed under the full control of the state in its corporate capacity, subject, of course, to the fundamental condition that it should authorize only such rates as were legal and not inconsistent with the constitutional rights of the railway company.

Again, in the case of *Oklahoma v. Chicago, Rock Island & Pacific Railway Co.*, 31 Sup. Ct. Rep. 442, 220 U. S. 302, the court held (page 443):

> "Whether any particular rates charged by the railroad company after Oklahoma became a state were illegal, as being unreasonable and purely arbitrary, depended upon the laws of that state touching the matter, or upon the provision of the federal constitution, protecting property against undue exactions without due process of law."

It would be conceded a state law regulating a federal subject would be void, and a federal law regulating a subject of state jurisdiction would also be void.

Trade Mark Cases, 100 U. S. 82.

Ill. Cent. R. Co. v. McKendree, 203 U. S. 514.

Howard v. Ill. Cent. R. Co., 207 U. S. 463.

In the case last cited Mr. Chief Justice White in discussing this point said (page 502):

> "It is apparent that if the contention were well founded, it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the constitution, and would destroy the authority of the states as to all conceivable matters which, from the beginning, have been, and must continue to be, under their control so long as the constitution endures."

While under the constitution Congress cannot control or regulate intrastate commerce, it has shown unmistakably that it has no intention so to do, but on the contrary rejected a proposed amendment to the law which it was thought might be construed as extending

the powers of the federal commission over matters of domestic concern, and in the sections relating to review by the courts in the act to regulate commerce, made additional provisions for procedure where acts of states or those of state officers are involved.

The first section of the original act to regulate commerce had and now has this provision:

> "*Provided, however,* that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one state and not shipped from or to any state or territory as aforesaid."

In the sixty-first Congress, second session, a substitute amendment was recommended by the House Committee to H. R. 17536, being the bill to amend the act to regulate commerce. (Report No. 928).

The amended bill omitted the provision quoted above. This omission immediately met with opposition on the grounds that it might make the entire bill unconstitutional under the doctrine in the employers' liability case, and that it might be used as a basis for an unwarranted interference with state commerce and matters of state concern.

The proposed amendment was rejected and the original proviso restored by the House of Representatives without objection. (Vol. 45, Cong. Rec., No. 112, p. 5650).

By Section 17 of the act creating the Commerce Court and other additional provisions, Congress provided a special procedure where injunctions are sought

suspending or restraining acts done or orders made by state authority, and required the same to be heard by three judges.

ACTION OF INTERSTATE COMMERCE COMMISSION WHERE STATE RATES WERE INVOLVED.

As evidencing the universal acceptance of the doctrine enunciated in the foregoing cases, the action of the Interstate Commerce Commission when called upon to take action involving intrastate rates, is illuminating.

The commission has repeatedly refused to take jurisdiction over state rates even where it was alleged the rates touched upon or interfered with interstate commerce.

The federal government had and could have no authority over transportation which began and ended in a particular state.

Baer Bros. Merc. Co. v. Mo. Pac. Co., 18 I. C. C. Rep. 329, 333.

Hussey v. C. R. I. & P. Ry. Co., 18 I. C. C. Rep. 366.

Haines v. C. R. I. & P. Ry. Co., 13 I. C. C. Rep. 214.

Chandler Cotton Oil Co. v. Fort Smith & West. R. Co., 18 I. C. C. Rep. 478.

Morgan v. M. K. & T. Ry. Co., 12 I. C. C. Rep. 525, 528.

Montgomery Freight Bureau v. Western Ry. of Ala., 14 I. C. C. Rep. 150.

Marshall Oil Co. v. C. & N. W. R. Co., 14 I. C. C. Rep. 210.

Lincoln Com. Club v. C. B. I. & P. R. Co., 18 I. C. C. Rep. 819.

In *Saunders & Co. v. Southern Express Co.*, 18 I. C. C. Rep. 415, 422, the commission said:

"While we have full authority, upon certain principles and within certain limits definitely fixed in the amended act, to deal with interstate rates, it is expressly provided in Section 1:

" 'That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.'

"This language seems to have but one meaning, and that is, that, although the Congress constitutionally may give and in fact has given to the national commission authority to control and regulate the rates to be demanded and accepted by interstate carriers on interstate traffic, it has excluded us from the exercise of any such powers as to the purely state traffic of interstate carriers. Whatever authority may be vested in the courts for the redress of such wrongs, it seems reasonably clear that this commission, under such circumstances as are disclosed on the record, may not lawfully interfere by an order the purpose of which is directly or indirectly to affect the rates imposed upon the defendant by the order of the Alabama commission."

In the case of *Wells-Higman Co. v. Grand Rap* & *Indiana Railway Co. et al.*, 19 I. C. C. Rep. 487, complaint was filed with the Interstate Commerce Co mission respecting rates charged on a shipment fr Metropolis, Illinois, to Chicago, Illinois, reconsigned Lawton, Michigan. Reconsigning instructions we given to the carrier not participating in the origi movement. It was held that two separate movem resulted, the first intrastate and the second interst The carriers participating in the interstate move were not made parties defendant. The complaint w dismissed as no overcharge was shown for transporta within the jurisdiction of the commission.

In discussing the facts in the case, the commis held (page 490):

> "The contract entered into with the Illinois Central for the intrastate transportation to Chicago, care of Pere Marquette, at Riverdale, was duly discharged before the interstate movement to Lawton commenced,"

citing *Gulf, Colorado & Santa Fe R. R. Co. v. Te* 204 U. S. 403. The commission also cited *Coe v. Er* 116 U. S. 525, which case fixes the time when dome commerce becomes interstate commerce. According they found

> "two separate and distinct movements, therefore, comprise this transportation from Metropolis to Lawton—an intrastate movement from Metropolis to Chicago and an interstate movement from Chicago to Lawton. Over the intrastate movement we have no jurisdiction."

Carriers have the right to advance local charges respective of the through rate under control of In

state Commerce Commission. If an order required through rate should not exceed sum of locals, they could advance locals and thus defeat order. The only way to overcome this would be for commission to fix the through rate. The commission would have no control over the local rates.

Mich. Buggy Co. v. G. R. & I. Ry Co., 15 I. C. C. Rep. 297.

As to state control over rates even where interstate rates are involved, see *Kurtz v. Penn. Co.*, 16 I. C. C. Rep. 410.

In *Howard v. Ill. Cent. R. R. Co.*, 207 U. S. 463, 502, the court, *inter alia*, held that a carrier by engaging in interstate business does not thereby submit all its business affairs to the regulating powers of Congress.

In answer to the argument that a carrier which subjects itself to congressional control cannot be heard to complain of such regulations the court states (page 502):

> "It assumes that, because one engages in interstate commerce, he thereby endows Congress with power not delegated by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which can not be availed of except upon such conditions as Congress may prescribe, even although the condi-

tions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the constitution, and would destroy the authority of the states as to all conceivable matters which, from the beginning, have been, and must continue to be, under their control so long as the Constitution endures."

This opinion is by a divided court, Mr. Justice Moody, Harlan, McKenna and Holmes dissenting. In his dissenting opinion, Mr. Justice Moody makes this significant statement (page 505):

> "At the threshold I may say that I agree that the Congress has not the power directly to regulate the purely internal commerce of the states, and that I understand that to be the opinion of every member of the Court."

REMOTE OR INDIRECT INTERFERENCE WITH INTERSTATE COMMERCE.

The interference with interstate commerce that is subject to condemnation is direct, not that which is remote or indirect.

Munn v. Illinois, 94 U. S. 113.

Stone v. Farmers, etc. Trust Co., 116 U. S. 307.

Wabash, St. L. & P. R. R. Co. v. Illinois, 118 U. S. 557.

Budd v. New York, 143 U. S. 517.

Covington, etc., Bridge Co. v. Kentucky, 154 U. S. 204.

N. Y. L. E. & W. R. Co. v. Pennsylvania, 158 U. S. 439.

Louisville & N. R. Co. v. Kentucky, 161 U. S. 677.

W. U. Tel Co. v. James, 162 U. S. 650.

Hennington v. Georgia, 163 U. S. 299.

Chicago, etc., R. Co. v. Solan, 169 U. S. 133.

Lake Shore, etc., R. Co. v Ohio, 173 U. S. 285.

Wisconsin, etc., R. Co. v. Jacobson, 179 U. S. 287.

Louisville, etc., R. Co. v. Kentucky, 183 U. S. 503.

Houston Central Ry. Co. v. Mayes, 201 U. S. 321.

McNeill v. Southern Ry. Co., 202 U. S. 543.

Alabama, etc., R. Co. v. Commission, 203 U. S. 496.

Gulf, Colorado & Santa Fe R. Co. v. Texas, 204 U. S. 403.

Ware & Leland v. Mobile Co., 209 U. S. 405.

New York v. Hesterburg, 211 U. S. 31.

Missouri P. Ry. Co. v. Larabee Flour Mills Co., 211 U. S. 612.

In *Louisville and Nashville Railroad v. Commonwealth of Kentucky*, 183 U. S. 503, at page 518 the Court *inter alia*, says:

> "It may be that the enforcement of the state regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may somewhat affect commerce generally; but we have frequently held that such a result is too remote and indirect to be regarded as an interference with interstate commerce; that the interference with the commercial power of the general government, to be unlawful, must be direct, and not the merely incidental effect of enforcing the police powers of the state."

In *Alabama and Vicksburg Railway v. Mississippi Railroad Commission*, 203 U. S. 496, the state railroad commission required the railroad to put into effect a freight rate on grain and grain products from Vicksburg to Meridan. It was contended that such order directly interfered with interstate commerce. The Court in passing upon this point (page 500), said:

> "While it may be true that a local railway's share of an interstate rate may not be a legitimate basis upon which a state railroad commission can establish and enforce a purely local rate, yet, whenever, in the guise or pretense of a rebilling rate, some merchants are given a low local rate, the commission is justified in making that rate the rate for all."

In the case of *Missouri Pacific Railroad v. Larabee Flour Mills Company*, 211 U. S. 612, the state authorities had made an order compelling the railroad company to resume the making of transfer of cars between the lines of the Atchison, Topeka and Santa Fe Railroad Company, and the mill elevators of plaintiff situated in the town of Stafford. The order was

generally applied to all shippers. It appeared that about three-fifths of the flour shipped by the milling company was interstate commerce. The railroad company objected on the ground that the order was an unconstitutional interference with interstate commerce by the state authorities. The Court rejected the contention, and held the order to be valid. At page 620 of the opinion the Court uses this language:

> "The roads are, therefore, engaged in both interstate commerce and that within the state. In the former, they are subject to the regulation of Congress; in the latter, to that of the state; and, to enforce the proper relation between Congress and the state, the full control of each over the commerce subject to its dominion must be preserved."

In *Covington, etc., Bridge Co. v. Kentucky*, 154 U. S. 204, 209, in speaking of the relative domains for state and federal activities, Mr. Justice Brown says:

> "First, those in which the power of the state is exclusive; second, those in which the state may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive and the states cannot interfere at all. The first class, including all those wherein the states have plenary power, and Congress has no right to interfere, concern the strictly internal commerce of the state, and while the regulations of the state may affect interstate commerce indirectly, their bearing upon it is so remote that it cannot be termed in any just sense an interference * * *."

In *Houston Central Ry. Co. v. Mayes*, 201 U. S. 321, the Court said at page 328:

> "As the power to build and operate railways and to acquire land by condemnation usually rests upon state authority, the legislatures may annex such conditions as they please with regard to *intra*state transportation, and such other rules regarding *inter*state commerce as are not inconsistent with the general right of such commerce to be free and unobstructed."

In *Pennsylvania R. Co. v. Hughes*, 191 U. S. at 488, the Court by Mr. Justice Day said:

> "It is well settled that the state may make valid enactments in the exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an effect upon interstate traffic."

It therefore appears:

(a) The power of the nation is supreme and exclusive so far as respects interstate commerce;

(b) The power of the state is supreme and exclusive so far as respects intrastate commerce;

(c) The interference by a state with interstate commerce or by the nation with intrastate commerce must be direct and not indirect, or incidental;

(d) Congress has expressly recognised the right of the state in this control and has affirmatively exempted state traffic from the operation of the Act to Regulate Commerce.

DOES THE ORDER COMPLAINED OF AFFECT INTERSTATE COMMERCE?

The basis of the bill rests upon the following contentions:

1. The order applies to all freight moved under class rates between Portland and points on the lines of the appellant in Oregon east of The Dalles.

2. That freight brought into Portland in original packages and without coming to rest within Oregon or becoming part of the traffic of the state will be shipped from Portland to points east of The Dalles by carriers and persons bringing the same to Portland with the intention of immediately reshipping them; and that by the order, the rates established thereby apply to these shipments.

3. That in *some* instances and to *some* points in Oregon and Washington under certain tariff rules and formulae of appellant, rates from eastern points can not exceed the terminal rate to Portland plus the local rate from Portland back to destination. That wool rates to eastern points are also affected by changing the local rates. From California points the rate is generally arrived at by adding to the vessel or rail rate *to* Portland the local rates from Portland to destination named in the tariff affected by the order of the Commission.

4. That by reason of the order the movement of commodities handled by Baker City merchants in competition with Portland merchants, as well as the rate will be affected.

5. Other allegations are as to the effect on appellant's through rates by competing lines to Portland securing the advantage of the local rates.

We believe the foregoing statement covers substantially the grounds on which appellant bases its allegations and claim of interference by the order with interstate commerce. The real underlying basis of the bill, the theory on which it was framed and the case presented, is based upon the assumption that, if a carrier at any time uses a *local rate* as part of a *formula* in arriving at a through rate, then no matter how unreasonable and therefore unlawful a local rate may be, no authority can change it, as an interstate rate would be affected.

It is an attempt to defeat all state control over state rates, and to control the state rates through an interstate rate by using the local rate in arriving at the interstate rate. This fact will be elaborated when that point is discussed.

THE ORDER.

As has already been shown, it affirmatively appears the order was made on complaint, after due notice and full hearing. No complaint is made as to any jurisdictional defects or denial of any rights, or opportunity to be heard. There is no suggestion of newly discovered evidence, that the evidence did not justify the finding, that there are any facts not presented to the commission upon which appellant will rely, or that all the facts were not submitted to the commission.

The complaint was based on the unreasonableness of class rates only for the transportation of merchandise

and commodities between Portland and points on the complainant's lines of railway in the state of Oregon.

The changes made by the order affect *class rates only* within the state of Oregon, between Portland and points east of The Dalles, as shown in freight tariff L-525. In that book of rates the *particular rates* in question *as well as many other* rates are published.

The order is perfectly plain and certain, and does not purport or pretend to deal with anything but class rates on traffic within the state of Oregon.

The portions of the order necessary to the consideration of this question have already been set out in this brief (page 21), *ante*, to which we refer the court at this point for greater certainty as to its language. (See Record, pp. 182-184).

Just what phraseology is required to confine an order made by a state Commission to state rates, we do not apprehend. It would neither add to nor detract from the order to say the order refers wholly to intrastate commerce, for it could refer to nothing else. If it were attempted to be applied to interstate commerce, the attempt would fail and there is no such allegation made.

If it were made it would be of no importance, for if it were a fact, relief would follow instantly. No language used by the Commission could add to its powers.

Indeed it is not distinctly alleged or claimed the order in itself in any way attempts to fix or regulate interstate rates, but the effect of the order will be to regulate them to some extent.

As was said by the Court below:

"The express purpose of the railroad commission act is to regulate transportation and commerce, and common carriers thereof, within the state. This is apparent, both from the title of the act and from the provisions thereof. The title runs:

"To regulate transportation and commerce, and common carriers thereof in this state, and, for that purpose, to create a Railroad Commission of Oregon, etc.

"By the eleventh section the term 'railroad' is defined to embrace all corporations that now, or may hereafter, operate, manage, or control any railroad or interurban railroad * * * as a common carrier in this state. And it is further declared that:

"The provisions of this act shall apply to the transportation of passengers and property * * * and to all charges connected therewith, and shall apply to all railroad companies, etc., that shall do business as common carriers upon or over any line of railroad within this state.

"By section 13 it is required that every railroad shall file with the commission, schedules showing all rates, fares and charges for the transportation of passengers and property, 'which it has established and which are in force at the time between all points in this state upon its line;' by section 18, that 'whenever passengers or property are transported over two or more connecting lines of railroad between points in this state,' the joint rates of charge therefor shall be reasonable and just. These general provisions indicate an undoubted purpose to limit the scope of the exercise of the

commission's powers within the state. But by section 47 it is made the duty of the commission to investigate freight rates on interstate traffic on railroads in the state, and when, in the opinion of such commission, the rates are excessive or discriminatory, to present the facts thereof to the offending railroad company, and, if without avail, then to apply to the Interstate Commerce Commission for relief. From this one provision of the act, if from none other, the deduction is absolute that there was no intention on the part of the Legislature of the state to enter the domain of interstate regulation of railroad traffic. The commission is a state commission, designed to render state service, and no intendment should be deduced that it is empowered to execute a broader or an unlawful service, unless the language is explicit, unmistakably leading to such conclusion. No such language is found in the act, and upon its face it is not inimical to the commerce clause of the national Constitution.

"The order of the commission enjoining upon the complainant the adoption of the classification therein prescribed is not so specific, but the purpose is reasonably deducible. The mandate of the order is that complainant shall cease and desist from charging any higher rates within this state for the transportation of merchandise and other commodities between the City of Portland and points on the defendant's main, branch, leased or otherwise controlled railroad lines within the state of Oregon, covered by the class rates in said tariff No. L-525, O. R. C. No. 89, I. C. C. No. 1146, than the class rates prescribed in this order. Then follows the basis of the rates prescribed,

or rather the formula by which they may be readily ascertained. The order, therefore, can be effective only within the state of Oregon. In this there is no ambiguity. That the Western Classification was taken upon which to base the formula for ascertaining the rates ordered to be substituted cannot change the purpose of the order. The result would have been the same if the commission had fixed the same rates without using tariff L-525 as a basis for its formula. The order is not specific, however, in this: That it does not, in direct terms, say that the rates so fixed shall apply to the transportation of intrastate commerce only; but, considering that the commission is a state organism, imbued with authority to fix rates within the state and not beyond its confines, it is but a legitimate deduction that its purpose in promulgating the order was to prescribe rates effective as relating to intrastate, and not interstate commerce. Presumptions are always in favor of the lawful exercise of a power—not that it was unlawfully exercised, or that a functionary has exceeded the authority delegated or bestowed. So that, as matter of law, neither in the intendment of the act, nor in the draft of the order, has there been an invasion of the right and power of Congress to regulate commerce between the states." (Rec. 64.)

The case of *Chicago I. & L. Ry. Co. v. Railroad Commission* (Ind. Sup. Ct.), 95 N. E. Rep. 864, is directly in point. At page 868 of the opinion the facts and the conclusions of the Court from which we quote are set out at length:

"Appellant's next contention is that the order is void because it purports to interfere with interstate commerce. The order requires a tariff of $3 per car load for the movement of all commodities in car load in the switching service. There is nothing in the order limiting its application to intrastate commerce. Before the shippers' petition was filed with the commission, appellant had filed with the commission its terminal tariff in connection with the Indianapolis Southern. This tariff applied to both state and interstate commerce, and was the only rate sheet controlling such services at Bloomington. In the shippers' petition, the prayer for relief was for an order requiring defendants to issue and file just and reasonable rates for the switching of all car load traffic between their lines and all the industries at Bloomington, Indiana, and that the respondents be required to apply the same for two years, as required by law, to the movement of all traffic destined on either line at Bloomington, Indiana, *from points in Indiana.* (Italics ours). The petitioners further prayed that the Commission determine what are just rates for switching services in interstate traffic, at that point, and recommend to respondents to apply such rate, and in case of failure to apply it, that the Commission apply to the Interstate Commerce Commission for relief on behalf of petitioners.

"On the above petition the order was made. Of course the state commission had no power to adjust rates for interstate traffic. Appellee contends that the Court is not warranted in construing the order as having such application. There is nothing in appellant's complaint

to show that the Commission or shippers are contending for the application of the commission rates to interstate commerce, except the language of the order itself. No doubt, on motion by appellant, the order would have been so modified by the Commission as to expressly limit the rates to intrastate traffic. Such motion was not made. In *New York Central, etc., R. Co. v. Interstate Com. Com'n* (C. C.) 168 Fed. 131, the Court considered the effect of an omission of time limit in an order of the Interstate Commission. It was held that the law read the limitation into the order; that the Interstate Commerce Commission is an administrative tribunal, dealing with practical problems, and that strict rules of pleading should not be held applicable to it. Construing the order in the light of the petition, and the limits on the power of Commission, imposed by both the Federal Constitution and the statute creating it, we do not feel warranted in construing the order as intending to apply to interstate commerce," citing:

Pittsburg etc. R. Co. v. Railroad Com., 171 Ind. 189.

Chicago etc. R. Co. v. Railroad Com., 173 Ind. 469.

Stone v. Farmers' Loan & Trust Co., 116 U. S. 307.

"The law presumes the acts of officers of the state to be rightly done and gives them faith accordingly." * * *

Interference by the state with interstate commerce being unlawful will not be presumed.

Burlington, C. R. & N. R. Co. v. Dey, 82 Ia. 312, 339.

In *Howard v. Illinois Cent. R. Co.*, 207 U. S. 463, 500, Mr. Justice Moody said:

> "The presumption that other branches of the government will restrain themselves within the scope of their authority and the respect which is due to them and their acts admit of no other attitude from this Court."

TARIFF L-525.

It is alleged in the bill of complaint that the order affects tariff L-525 and that this tariff contains the rates in question, and that the rates in some cases are used in arriving at the through rate and that a change in the tariff affects interstate rates, and that it is filed with the Interstate Commerce Commission.

This plea will not stand the test of the slightest analysis. The tariff which is before the Court is simply a large book containing many different kinds of rates on various commodities both interstate and intrastate.

It was not "tariff L-525," which is merely descriptive of the book in which certain rates are published, that was acted on by the Commission, but *certain state rates* published therein.

The fact that appellant chooses to publish for its own convenience all or many of its rates in one book and label that book "L-525" is of no consequence, nor does it affect the issues in this case.

It is the rate and not the book that is affected. Moreover the same book as appears from the bill of

complaint was on file with the Oregon Commission as required by law (O. R. C. No. 39) as showing such of the rates therein published as applied to state traffic and subject to state authority.

No presumption therefore follows because rates on intrastate traffic published therein were reduced that because the same book was on file with the Interstate Commerce Commission it was an interference with interstate commerce. If so, then the presumption would be equally strong that a change in interstate rates therein published would be an interference with the state commerce.

The order constantly refers to the *class rates* now in effect under tariff L-525, the tariff filed with the state Commission in compliance with law, as unjust and unreasonable, etc.

To avoid any possible conflict, appellant could print its state rates and interstate rates in separate books, and file them separately with the state and Interstate Commissions, and thus by this very simple expedient avoid the fanciful difficulty complained of.

At any rate the mere convenience of appellant in printing its tariffs is hardly sufficient grounds for setting aside the law of a sovereign state.

MATTERS AFFIRMATIVELY SHOWN BY THE ORDER AND COMPLAINT.

a. The rates in controversy are class rates only over the lines of the appellant between points within the state of Oregon.

b. There was a full hearing and investigation at which all parties were represented and participated.

c. No jurisdictional defect or abuse of power is alleged.

d. After due investigation and consideration of all the facts the Commission found the rates complained of unjust and unreasonable.

e. The Commission fixed class rates which they found to be just and reasonable over the appellant's main and branch lines on traffic between Portland and other points within the state of Oregon east of The Dalles.

f. The order applies to class rates only over the lines of the appellant within the state of Oregon.

g. The rates prescribed became effective twenty days after the service of the order.

ORIGINAL PACKAGE DECISIONS.

It is also sought to apply the doctrine announced in the "Original Package" decisions to the facts in this case, and the contention is advanced that as long as goods remain in original packages that that fact alone irrevocably fixes their status as interstate commerce and the state has no power or authority to name rates even for their movement within the state.

While the position above outlined is not stated in the exact language used above, the record shows beyond question that the statement as to the intent of the allegation is not denied.

In paragraph II of the Amendment to the Complaint (Rec. 77) this claim first appears as a definite allegation where shipments "in the same packages are referred to." The question is also referred to at page 304 of the Opinion, 173 Fed. Rep. (Rec. 69). It arose

again on argument on the demurrer to the amended to the complaint, and in passing on this question the Court said, 177 Fed. 820:

> "It still does not seem to me that this is the proper proceeding in which to determine the question attempted to be presented, as to whether goods shipped into Portland from outside the state in original packages, and sooner or later shipped out again to the interior of the state in the same unbroken packages, would constitute interstate commerce. This might depend upon how the goods were treated and considered while in Portland, or upon other conditions, that are not made to appear either by the original bill or by the amendment. If the order be valid, as it is held to be, then all shipments or commerce which are intrastate in character must be controlled by the order; all that are not are not affected by it. If question arises as to any particular shipment or any particular commodity to be moved, or in process of transportation, it might be settled by carrying the matter to the commission; or if the commission unlawfully exacts the state rate upon interstate traffic, I see no reason why it may not be enjoined in any Court of competent jurisdiction. The special cases must necessarily be determined as they arise, as it is impossible, by a general decree, to determine in advance what specific commodities and the transportation thereof constitute interstate and what intrastate commerce." (Rec. 88.)

Thereafter as appears from the record, the temporary restraining order was dismissed, an injunction denied, and the rates under the order went into effect.

APPLICATION FOR REPAYMENT OF EXCESS CHARGES COLLECTED.

On application for repayment for difference in rates collected under former tariff and under the order, payment was refused by appellant on certain shipments in original packages, thus bringing the point squarely before the Court and making clear the exact contention in this respect of appellant.

The question was presented by the petition in intervention of W. S. Smallwood (Rec. 90).

Three shipments as being representative in their character were presented:

A. Shipment of assorted groceries in original packages by Allen & Lewis from Portland, Oregon, to La Grande, Oregon.

The goods were purchased in other states than Oregon by Allen & Lewis, to become part of their stock in trade at Portland. They were billed and transported to Portland by water and by rail. On arrival the bills of lading were surrendered, the freight paid, possession taken by Allen & Lewis, and were then taken in original packages to the store rooms of Allen & Lewis, became part of its stock in trade, held an indefinite period and thereafter sold from said stock in the original packages and transported to La Grande in said packages.

B. Shipment of sugar in original sacks by Allen & Lewis from Portland to La Grande, Oregon.

The sugar shipped was a portion of a larger lot purchased in California by Allen & Lewis to become part of its stock in trade at Portland. It was billed and transported to Portland its point of destination by an independent water carrier, having no connection what-

ever with appellant. On arrival at Portland, the bill of lading were surrendered, the freight paid, possession taken, and the sugar in the original packages taken to the store and warehouse of Allen & Lewis, became a part of its common stock in trade carried by it for sale, then held an indefinite period for sale and thereafter shipped from its stock in Portland in original packages as received and transported by appellant to La Grande, to be held by the consignee for the account and subject to the order of Allen & Lewis.

C. Shipment of sugar in original packages by Lang & Co. from Portland to Baker City, Oregon.

This sugar was purchased in California by Lang & Co. for future sale by it at Portland, with the intention of shipping it from Portland to some point within the state of Oregon. It was transported to Portland by an independent water carrier, having no connection with appellant. On arrival at Portland the bill of lading was surrendered, freight charges paid and possession taken in packages as shipped from San Francisco. It was placed in a warehouse at Portland, insured against loss by fire by Lang & Co. in its own name and as owner thereof, held by it in warehouse until sold and then supplied for loading, and the same was sold after its arrival at Portland to the Baker City Grocery Company by Lang & Co., and reshipped by Lang & Co. to the Baker City Grocery Co. at Baker City, Oregon, over the lines of the appellant under a bill of lading issued by the appellant; and was transported by the appellant thereunder to Baker City in the original packages and there delivered by the appellant to said grocery company, who paid the transportation charges thereon

for transporting the same from Portland to Baker City.

This statement may be prolix but it is deemed important this Court should know just what the allegations of the bill mean and the character of shipments appellant contends is interstate commerce and not subject to the order. We also have the right to assume that, as this record was prepared at appellant's request, it was intended this Court should consider this question in passing on the case.

The Court held the shipments to be intrastate commerce subject to the order (Rec. 96).

The question is important in indicating the extent public carriers go in their effort to be relieved from state control, and as we shall hereafter show, any control, either state or national, as to a very considerable part of their traffic.

ISSUES ON PETITION IN INTERVENTION.

The following facts apply to each shipment:

a. The goods were originally purchased in other states, shipped to jobbers in Portland by various means of conveyance in original packages. In two of the cases, the goods were originally brought to Portland by independent water carriers having no connection with any railroad.

b. The goods in the first instance were billed and transported to Portland, their point of destination, bills of lading surrendered and possession taken by the consignee and the transportation under the contract ended.

c. They were then taken to either stores or warehouses of jobbers in the City of Portland, placed in common stock carried by the jobbers for sale at Port-

land, Oregon, and held indefinitely for sale.

d. They were sold, and under a new and distinct contract transported in the original packages to various points in the state of Oregon.

e. The goods when purchased were intended to be resold in the regular course of business by the jobbers who originally purchased them.

We therefore have three salient controlling facts:

(1) A definite contract of transportation actually completed.

(2) An actual delivery to the consignee at the point of destination.

(3) A subseqent sale and shipment, wholly within the state.

Should the Court consider it of any importance, it further affirmatively appears that all of the goods in question were purchased in other states and not imported from foreign countries.

Appellant contended in the Court below, and we assume will contend in this Court, that while the shipments were intrastate, the commerce was interstate. The contention was based on two theories: (1) The intention to resell the goods in original packages impressed them with an interstate character, which could never be removed until the packages were broken and goods actually distributed. (2) Being held and sold in the original packages, they remained interstate commerce until the packages were broken.

AUTHORITIES.

The case of *Gulf, Col. & Santa Fe R. Co. v. Texas*, 204 U. S. 408, is controlling and decisive as to this question.

In that case the H. G. Co., at Kansas City offered to and did sell S. & B. two carloads of corn at Goldthwaite, Texas, for delivery on track at Goldthwaite. To fill the order, the H. G. Co. contracted with the H. C. Co. of Kansas City for the purchase of two cars of corn to be delivered to the H. G. Co. at Texarkana.

At the time of the purchase by the H. G. Co., its manager intended that the corn it purchased should go to S. & B. and should be shipped to Goldthwaite from Texarkana.

The joint through rate on corn from Kansas City, Mo., to Goldthwaite, Texas, via Texarkana, Texas, was 85 cents. The *interstate* rate from Kansas City to Texarkana was *18 cents;* the *intrastate* rate from *Texarkana to Goldthwaite fixed by the State Commission was 14 cents, a total of 32 cents,* or three cents less than the through rate from Kansas City to Goldthwaite. Because of these rates and its knowledge thereof the consignee ordered the cars of corn for delivery at Texarkana, the final destination being Goldthwaite. On reaching Texarkana the original bills of lading were surrendered and the same cars forwarded under new bills of lading over the T. P. R. R. to Goldthwaite. The cars were never unloaded, nor the seals broken, but were transferred in the original cars without breaking bulk to the T. P. R. R. and by it transported to Goldthwaite. On reaching this point the consignee tendered the charges prescribed by the State Railroad Commission, which the agent declined to accept and demanded and collected a larger sum. The railroad company was fined by the state court for extortion and the case was taken to the Supreme

Court of the United States on a writ of error. In passing upon the case, the Court, speaking by Mr. Justice Brewer, said (page 411):

> "The single question in the case is whether, as betwen Texarkana and Goldthwaite, this was an interstate shipment. If so, the regulations of the state railroad commission do not control, and the Court erred in enforcing the penalty. If, however, it was a purely local shipment, the judgment below was right and should be sustained."

The Court in passing upon the case *inter alia* said:

> "It is, however, contended by the railway company, that this local transportation was a continuation of a shipment from Hudson, South Dakota, to Texarkana, Texas; that the place from which the corn was started was Hudson, South Dakota, and the place at which the transportation ended was Goldthwaite, Texas; that such transportation was interstate commerce, and its interstate character was not affected by the various changes of title or issues of bills of lading intermediate its departure from Hudson and its arrival at Goldthwaite. * * * The first contract of shipment in this case was from Hudson to Texarkana. * * When the Hardin Company accepted the corn at Texarkana the transportation contracted for ended. The carrier was under no obligations to carry it further. It transferred the corn, in obedience to the demands of the owner, to the Texas & Pacific Railway Company to be delivered by it, under its contract with such owner. * * * *Whatever may have been the thought or purpose of the Hardin Com-*

pany in respect to the further disposition of the corn was a matter immaterial so far as the completed transportation was concerned.

"In this respect there is no difference between an interstate passenger and an interstate transportation. If Hardin, for instance, had purchased at Hudson a ticket for interstate carriage to Texarkana, intending all the while after he reached Texarkana to go on to Goldthwaite, he would not be entitled, on his arrival at Texarkana, to a new ticket from Texarkana to Goldthwaite at the proportionate fraction of the rate prescribed by the Interstate Commerce Commission for carriage from Hudson to Goldthwaite. *The one contract of the railroad companies having been finished, he must make a new contract for his carriage to Goldthwaite, and that would be subject to the law of the state within which that carriage was to be made.*

"It must further be remembered that no bill of lading was issued from Texarkana to Goldthwaite until after the arrival of the corn at Texarkana, the completion of the first contract for transportation, the acceptance and payment by the Hardin Company. In many cases it would work the grossest injustice to a carrier if it could not rely on the contract of shipment it has made, know whether it was bound to obey the state or Federal law, or, obeying the former, find itself mulcted in penalties for not obeying the law of the other jurisdiction, simply because the shipper intended a transportation beyond that specified in the contract. It must be remembered that there is no presumption that a transportation when commenced is to be continued beyond

the state limits, and the carrier ought to be able to depend upon the contract which it has made, and must conform to the liability imposed by that contract." (Italics ours.)

The Interstate Commerce Commission has uniformly followed this ruling of the Supreme Court.

> *"A shipper has the right to consign a shipment to a given point, pay charges upon it, assume custody, take possession, and later reship to another point under rates lawfully applicable to such reshipment."*
>
> *Morgan et al. v. M. K. & T. Ry. Co. et al.*, 11 I. C. C. Rep. 525, 523.
>
> *Montgomery Freight Bureau v. Western Ry. of Ala.*, 14 I. C. C. Rep. 150.
>
> *Marshall Oil Co. v. C. & N. W. Ry. Co.*, 14 I. C. C. Rep. 210.

Kurtz v. Pennsylvania Co., 16 I. C. C. Rep. 410, 412, was a case where the sum of two locals was less than the through rate and the defendant urged that it would be illegal upon the part of the complainant to obtain through transportation at less than the published through rate and illegal upon their part to permit it.

> "If, they say, the complainant *knowing that he is to make a through journey from New Castle (Pennsylvania), to New York,* purchases a local ticket for $1.00 to Pittsburg and a local ticket from Pittsburg for $10.50, for the purpose of thereby securing through transportation at $11.50, which is less than

the published through rate, he is guilty of a violation of the Act to Regulate Commerce; and the defendants, if they knowingly permit this practice, are equally guilty."

The Commission referred to the case of *Savannah Bureau vs. Charleston & Savannah R. R. Co.*, 7 I. C. C. Rep. 601, in which a through rate was greater than the sum of the locals. That is, the rate from Charleston to the state line was $3.00 and from the state line to Savannah $2.00, while the through rate was $6.00. The railroad would have no right to sell two local tickets for $5.00, for that would be an evasion of its published tariff rates. The Commission said (page 418):

"Upon the other hand, this Commission has stated in its administrative rulings, and now repeats, that the passenger may properly pay his fare from Charleston to the state line and again from the state line to Savannah, *although he thereby obtains through transportation between these points for less than the published through rate, and although he does so, knowing that he is to go from Charleston to Savannah, and deliberately seeking this means of obtaining transportation at less than the through rate.*

"The reason for this is that not the intent of the parties but the actual transaction must be regarded, as was held by the United States Supreme Court in Gulf, Colorado & Santa Fe R. R. Co. v. Texas, 204 U. S. 408." * * *

"The Charleston & Savannah Railroad Company sells to all the world tickets from Charleston to the state line for $3.00, and again from the state line to Savannah for $2.00. A passenger may purchase his ticket to the state line, and when he arrives there

that contract of transporation is at an end. He now purchases another ticket from the state line to Savannah and a new contract of transportation begins. If the regulations of the railroad company permit it, he may, instead of purchasing a ticket, pay his cash fare upon the train, to the same effect. He has indeed, secured through transportation for less than the through rate, but he has done so by putting together two local transportations at the local rates."

The Commission then held that the complainant might have entered the train at New Castle, intending to go to New York, used his local ticket to Pittsburg and his mileage ticket from Pittsburg, without violating the Act to Regulate Commerce, and defendants, had they known of the transaction and made no effort to prevent it, would not have been guilty of moral or legal wrongdoing, and the complainant would have been quite within his legal rights. (Italics ours).

Dobbs v. L. & N. R. Co., 18 I. C. C. Rep. 210, is in point. The complainant shipped three carloads of canned peaches from Oakhurst, Ga., to Marietta, Ga., and from thence rebilled one car to Lexington, Ky., and two cars to Cincinnati, Ohio. The through rates from Oakhurst to Lexington were 58 cents per hundred pounds and 60 cents to Cincinnati. A commodity rate of 27 cents from Marietta to Lexington and Cincinnati was in effect. A local rate of six cents was in effect from Oakhurst to Marietta, thus making the combination 33 cents. The complainant had applied to the carrier for a 27-cent rate from Oakhurst. Before the request was complied with he had shipped the three

cars in question. There was no dispute that complainant intended the cars for interstate shipment nor that he voluntarily sought to secure the lowest rate by shipping on the local rate to Marietta and thence to destination. He sought reparation on the basis of the rate from Marietta, claiming the Oakhurst rate was unreasonable. The defendant railroad claimed the movement from Oakhurst to Marietta was intrastate and that the rate from Marietta to destination was conceded reasonable. The Commission said:

> "Complainant did not attempt to make a through interstate shipment when tendering this freight to the carrier, and he expressly absolves the agents of the carrier from conniving for the purpose of defeating the through rate on canned goods. He states in this connection: 'The rates were given me, and the one from Oakhurst was so unreasonable that I took the best combination that I could make from them.' *By taking the course he did, complainant voluntarily adopted a movement and a rate applicable thereon which were intrastate in character. Gulf, Colorado & Santa Fe v. Texas*, 204 U. S. 403. *Moreover, separate contracts were made for the two movements; charges for the first movement were paid at Marietta and did not follow the shipments to destinations.*
>
> *"Under the facts of record we find that the commission is without jurisdiction of the movement from Oakhurst to Marietta to which was applied and collected the separately established state rate,* and as there is no allegation of unreasonableness as to the separately established interstate commodity rate from Marietta to

destinations, the complaint will be dismissed, and it will be so ordered." (Italics ours.)

In *Southern R. R. Co. v. Hunt (Ind.)*, 81 N. E. 721, the Court held that in fixing local freight rates on coal, the fact that the coal handled was interstate traffic did not affect the jurisdiction of the Commission to fix rates since the matter in controversy is a local rate and not a particular shipment.

When the charge and the actual transportation are confined to the limits of the territory of the state, it is not interstate commerce and is subject to state control.

Wabash, St. Louis and Pacific R. Co. v. Illinois, 118 U. S. 557.

"The *beginning* and the *ending* of the transit which constitutes interstate commerce are easy to mark. The first is defined in *Coe v. Errol*, 116 U. S. 517, to be the point of time that an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage. The latter is defined to be, in *Brown v. Houston*, 114 U. S. 622, the point of time at which it arrives at its destination. But intermediate between these points questions may arise. *State, Detmold, Prosecutor v. Engle*, 84 N. J. L. 425; *State, Lehigh & W. Coal Co., Prosecutors, v. Carrigan*, 89 N. J. L. 35; *The Daniel Ball (The Daniel Ball v. United States)*, 10 Wall. 557."

General Oil Co. v. Crain, 209 U. S. 211, 228.

When "property is at rest for an indefinite time, awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, it is subject to taxation. But, if it be actually in transit to another state, it becomes the subject of interstate commerce and is exempt from local assessment."

General Oil Co. v. Crain, 209 U. S. 211, 229.

The case of *American Steel & Wire Company v. Speed*, 192 U. S. 500, 519, is directly in point. In that case the question as to when interstate commerce ceased was fully discussed. In addition the "original package" question was presented as well as the fact that the goods in question were sold and intended for delivery in other states. Not only that but the Wire Company maintained merely a warehouse and not even a store at Memphis. It was alleged that the Wire Company, for the purpose of facilitating the sale and delivery of goods by it manufactured, had selected Memphis, Tennessee, as a distributing point, and had made arrangements in that city with a transfer company to take charge of the products when shipped to Memphis, store them in a warehouse, assort them, and make delivery of the goods to persons to whom goods were sold by the Wire Company. It was averred that the transfer company was only a carrier, and the Steel Company *was not a merchant in Memphis, but simply a manufacturer billing goods in original packages made in other states to the persons who had bought them.* It was alleged that the *goods in the warehouse in Memphis were merely in transit from the point of*

manufacture outside of the state to the persons to whom they had been previously sold and that the tax on the goods in Memphis was void, amongst other reasons because they had acquired no situs in Tennessee and were moved in channels of interstate commerce from the place where the goods were manufactured for delivery to the persons to whom, in fact, they had been sold.

The case was first heard in the state courts and determined against the Steel Company, and a writ of error prosecuted to the Supreme Court of the United States. Among the facts found were that the Transfer Company received the manufactured products at Memphis, assorted and delivered them either to the jobbers at Memphis, or to jobbers beyond the limits of Tennessee over the various lines of railroads and steamboats running into Memphis, as directed by complainant. It was found that the transfer company did not sell any of the complainant's products, or have any knowledge whatever of the prices at which the goods were sold; that their business was simply that of transferring and delivering under orders of the Steel Company. The goods of the complainant were manufactured at different points, shipped to Memphis to warehouses, assorted and distributed. Sales agents of the Steel Company canvassed the country, making contracts exclusively with jobbers, and the goods contracted for are described as *so many kegs of nails, so many kegs of staples, so many reels of barbed wire,* or so many *coils of smooth wire,* etc. The grade and quality was left open, and the customer can, when he makes his specifications, select any grade of goods he desires. In fixing the prices of these goods the com-

plainant always figures in the freight on the goods except when necessary to lower prices in order to meet competition. *The contracts are made usually before the goods arrive at Memphis, their point of destination, and generally in advance of the production of the goods at the complainant's factory; and the canvass for orders is made not only in advance of the shipment of goods but in advance of their production.* The orders are filled under an order from the Chicago office addressed to the transfer company at Memphis and selected by the latter out of the list of goods belonging to complainant in the warehouse. For the convenience of the Memphis trade the complainant advises the transfer company of the names of its customers there, and that company is instructed to deliver the goods embraced in the contracts with the Memphis jobbers, upon delivery of a letter to the transfer company which delivers the goods, attaching the dray receipt to a copy of the specification and forwarding the specification, letter and dray receipt to the office of the company in Chicago, where the invoice is made out and sent direct to the jobber. About ninety per cent of the goods kept on hand in Memphis ultimately goes to jobbers who reside outside of Memphis, and beyond the limits of the state. The remaining ten per cent goes to the Memphis jobbers. *All the goods forwarded to Memphis are products of the factory of the complainant; no part of them is ever purchased by it; complainant's goods are put up in the following original packages; nails and staples in kegs; smooth wire in coils tied by wire and barbed wire on reels. Each package is separately and distinctly made up at the*

factories for convenience of transportation, and is in this form delivered to the carriers at the initial point of transportation, and are in this form transported, assorted and delivered by the transfer company to the complainant's customers at Memphis, or shipped out of Memphis and beyond the limits of Tennessee, and in this form they ultimately come to the hands of complainant's customers in such foreign state. Each package is separate and distinct in itself, and while no particular package is consigned to any special customer, each keg of nails and staples is marked so as to show exactly what the package contains, and each coil and reel of wire is marked with a tag showing what the coil or reel contains, and no package is ever changed in any particular from the time it leaves the factory until it ultimately reaches the hands of the customers. The Supreme Court said (page 518):

> *"With these facts in hand we are of the opinion that the Court below was right in deciding that the goods were not in transit, but, on the contrary, had reached their destination at Memphis, and were there held in store at the risk of the Steel Company, to be sold and delivered as contracts for that purpose were completely consummated."* (Italics ours.)

ORIGINAL PACKAGE DOCTRINE NOT APPLICABLE

This doctrine is not involved in this case. The term "original package" is said to be simply "a convenient form of expression adopted to indicate that a license tax could not be exacted of an *importer* of goods from a *foreign country* who disposes of such goods in the form in which they were imported."

Cooke, Commerce Clause of the Fed. Const., 17.
Brown v. Maryland, 12 Wheat. 419.
Cook v. Marshall County, 196 U. S. 261.

In *Brown v. Maryland, supra*, the court said (page 441):

> "It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the constitution."

The leading case of *American Steel & Wire Co. v. Speed*, 192 U. S. 500, *supra*, in which all the questions and many of the cases are considered and discussed, would seem to be determinative of this question as ought to be applied in this case. At page 519 the court said:

> "Assuming that the goods concerning which the state taxes in this case were levied were in the original packages and had not been sold, *if the bringing of the goods into Tennessee from another state constituted an importation, in the constitutional signification of that word, it is clear they could not be directly or indirectly taxed. But the goods not having been brought from abroad, they were not imported*

in the legal sense, and were subject to state taxation after they had reached their destination and whilst held in the state for sale. This is as conclusively foreclosed by the decisions of this court as is the doctrine resting upon the decision in *Brown v. Maryland*. *Woodruff v. Parham*, 8 Wall. 123, 19 L. Ed. 382; *Brown v. Houston*, 114 U. S. 622, 29 L. Ed. 257, 5 Sup. Ct. Rep. 1091. The doctrine upon which the cases rest was this, *that imports, in the constitutional sense, embrace only goods brought from a foreign country, and consequently do not include merchandise shipped from one state to another*. The several states, therefore, not being controlled as to such merchandise by the prohibition against the taxation of imports, it was held that the states had the power, after the goods had reached their destination and were held for sale, to tax them, without discrimination, like other property situated within the state." (Italics ours.) See also *May v. New Orleans*, 178 U. S. 496.

INTERFERENCE WITH STATE COMMERCE.

It would seem *appellant is asking this court to interfere with state commerce; the state is not seeking to interfere with interstate commerce*. It should be borne in mind that in the case at bar the contract for transportation was ended, the goods stored in stock for sale, intermingled with the common mass of the property of the state, and whether in original packages or out of them were subject to the laws of the state of Oregon. If appellant's theory is correct, Congress has power, under such circumstances as those above outlined, not only to regulate the sale and control of the use of the

goods remaining in original packages, but to say what rate shall be charged for transporting the goods between points within the state of Oregon, or else there is no power or control over them vested in any authority.

ANALYSIS OF THE ORIGINAL PACKAGE CASES.

The case of *Leisy v. Hardin*, 135 U. S. 100, and *Lyng v. People*, 135 U. S. 161, are known as the "original package" cases. In considering these decisions their application depends upon the facts involved.

Congress has, of course, the power to regulate interstate commerce, and as a general rule any attempted regulation of such commerce by a state would be void. On the other hand every act on the part of a state that may remotely or indirectly affect interstate commerce is not void. The original package decisions to be understood must be studied both in light of the facts and of the constitutional provisions involved.

Brown v. Maryland, supra, dealt with the right of a state to tax imported goods. It will be noted *this case refers to importations from foreign countries only, and the constitutional prohibition is limited to the time the goods are held by the original importer in his warehouse unsold and in original packages.* When sold their distinctive character is lost, whether remaining in original packages or not. It was sought to apply this doctrine to importations between states, but the Supreme Court held otherwise. In *Woodruff v. Parham*, 8 Wall. 123, the court held, as stated in the syllabus, "The constitutional provision against taxing imports by the states does not extend to articles brought from another state."

Taking up the other class of cases arising under the commerce clause of the constitution, we refer, first, to *Leisy v. Hardin, supra.* The points decided in that case of interest here are, as stated in the syllabus, as follows:

> "A citizen of one state has the right to import beer into another state and the right to sell it there in its original packages. * * * The right of transportation of an article of commerce from one state to another includes the right of the consignee to sell it in unbroken packages at the place where the transportation terminates."

Lyng v. People, supra, follows *Leisy v. Hardin.*

These questions are not involved in this case. The court is not asked to pass upon the question whether a jobber has a right to purchase goods in other states and ship them in this state and resell them. The sole question is whether, after the transportation ends and the property has gone into the hands of the jobbers in the City of Portland and they resell it, and it is shipped to a local point in the state of Oregon, the last movement is intrastate commerce or interstate commerce.

Cattle dealers, receiving shipments of cattle bought by them for sale seldom being held longer than one day, are subject to taxation in state when received, even though some of them are purchased in other states with the intention of exporting them to foreign countries.

Myers v. Baltimore County, 83 Md. 385.

When products are shipped from one state and lodged in another state then to be offered for sale in the

open market, such products lose the character of interstate commerce and assume a domestic character.

Manufacturing Co. v. Wright, 97 Ga. 114.

L. B. Price Co. v. City of Atlanta, 105 Ga. 358.

In a case involving the control of the state over intrastate commerce, the Supreme Court in *Missouri P. R. Co. v. Kansas ex rel. Taylor,* 216 U. S. 262, 288, referring to one of the propositions advanced, said:

> "2. *That the order was void because it operates a direct burden upon interstate commerce.*
>
> "To support this proposition it is urged that the charter of the Interstate Railroad Company, the builder of the branch, provided for a road not only in Kansas, but to extend into Texas and Missouri, and therefore for an interstate railroad. This being its character, the argument proceeds to assert that the regulation of traffic on the road, whatever be the nature of the traffic, was interstate commerce, and beyond the control of the State of Kansas. But this simply confounds the distinction between state control over local traffic and federal control over interstate traffic.
>
> "To sustain the proposition would require it to be held that the local traffic of the road was free from all governmental regulation, unless, at the same time, it was held that the incorporation of the road had operated *to extend the powers of the government of the United States to subjects which could not come within the authority of that government consistently with the constitution of the United States.* Manifestly, the mere fact that the charter of

the road contemplated that it should be projected into several states did not change the nature and character of our constitutional system, and therefore did not destroy the power of Kansas over its domestic commerce, or operate to bring under the sway of the United States matters of local concern, and of course could not project the authority of Kansas beyond its own jurisdiction. The charter therefore left the road for which it provided subject, as to its purely local or state business, to the authority of the respective states into which it was contemplated the road should go, and submitted the road as an entirety, so far as its interstate commerce business was concerned, to the controlling power conferred by the constitution upon the government of the United States."

EXTENSION OF ORIGINAL PACKAGE DOCTRINE.

While it may be this "doctrine" has been extended beyond its original scope, we doubt if a court was ever asked to extend it to the extent sought in this case. Originally the cases arose on the taxation by a state of imported goods, while remaining in original packages in the hands of the importer unsold. Later it was applied to laws prohibiting the sale of intoxicating liquors, cigarettes, taxation and the like. But in no case even of foreign importation has the doctrine been extended to cover the packages *after sale* by the importer whether in original packages or not.

This court is now asked to hold that until an original package is actually broken up, it continues interstate commerce, no matter how often sold, the number

of hands it passes through or where sold, whether within or without a state, or by the original importer of the last of a series of purchasers and even in cases where it is conceded the shipments are purely intrastate.

The doctrine contended for by appellant would eliminate from all control as to rates, goods in original packages originating outside of a state so far as respects intrastate movement. The state rates under this theory would not apply, and as the Supreme Court says Congress has no jurisdiction, there is no authority to control.

Such a doctrine has no justification in reason under the constitution or the law.

ALLEGED INTERFERENCE WITH INTERSTATE COMMERCE ARISING FROM FACT THAT IN CONSTRUCTING INTERSTATE RATE TARIFFS TO OREGON POINTS APPELLANT USES THE INTERSTATE RATE TO PORTLAND AS A BASE PLUS THE LOCAL RATE FROM PORTLAND TO DESTINATION.

The court will, we assume, take notice of facts shown by the official census. Portland is by far the largest city in Oregon. It is the commercial, distributing and financial center of a large section of country. The trade and exchange of products between Portland and other places in Oregon is very large. It is the terminal of a number of transcontinental railways. It is at the head of deep sea navigation, and at the Junction of the Columbia and Willamette Rivers, both of which are navigable. A number of lines of steamers, both regular and independent, operate between Portland and San Francisco. Regular lines also

operate between Portland and Atlantic coast points. It is therefore a large transportation center and to and from some territories highly competitive. The appellant's railway is the only means of transportation for a large part of the territory in Oregon east of The Dalles.

The importance to the appellant to be able to make its rates on state traffic between points within the state over its lines, whether originating in Oregon or brought to Portland or any other point on its lines of railway, free from interference of any regulative authority, is apparent. The Interstate Commerce Commission has and can have no authority to regulate state traffic. If it is held any change in a local rate that may in any wise affect a through rate, is an interference with interstate commerce, then the state will be deprived of all power of rate control, as there is no difficulty in using locals as part of through rates or making through rates based on some point like Portland. Moreover, such a result would work to the enormous disadvantage of the people of the state and to all independent water carriers. The railroad with its boats could name a through rate, using its high local out of Portland, which might be perfectly reasonable for the entire haul, yet that part of the rate applicable to Portland by water be so low no independent carriers could exist, and no power could correct the injustice.

At the time the order complained of was made by the state railroad commission, the appellant in conjunction with other carriers was engaged in the transportation of interstate commerce through the City of Port-

land from Eastern and California points of origin to points of destination in the states of Oregon, Washington and Idaho.

MANNER IN WHICH INTERSTATE RATES WILL BE AFFECTED BY THE ORDER, AND REASONS GIVEN FOR THE CLAIM THAT THE ORDER INTERFERES WITH INTERSTATE COMMERCE.

Appellant is a party to a number of joint through tariffs which were in effect when the order complained of was made by the state commission. These tariffs and their numbers and the fact that they have each and all been duly published and filed with the Interstate Commerce Commission and were in effect at the time the order in question was made, are set out in the bill of complaint. The class rates in all these tariffs are governed by the western classification.

RATES FROM CALIFORNIA TERRITORY.

From San Francisco and other points in California shipments are made to inland points in Oregon beyond Portland, either by water over the San Francisco & Portland Steamship Co. or by the Southern Pacific Co. to Portland, and thence over the lines of appellant to destination. Where shipments are made by water through rates are established by adding certain arbitraries or local rates from points of origin to Portland to the rates fixed in Tariff L-525, from Portland to destination. Tariff L-525 contains the class rates changed by the order.

In case of rail shipments from points of origin on the lines of Southern Pacific Co. in California through rates consist mainly of a combination of certain arbi-

traries or local rates from point of origin to Portland, added to the local rates found in Tariff L-525 from Portland over the lines of the appellant to points of destination.

It is therefore alleged that the order of the state commmission reducing class rates over the lines of the appellant between Portland and other points in Oregon on account of the method used by appellant in making through rates as above described directly affects interstate rates and is therefore void.

RATES FROM EASTERN POINTS OF ORIGIN.

From eastern points of origin to Portland, rates are generally lower than from the same points of origin to intermediate points in Oregon. Rates to intermediate points in Oregon from eastern points of origin are arrived at as follows:

Commodity or class rates are named in the tariff to all points, but the tariff provides that where a rate to or from the point of origin to Portland, added to the local rate from Portland to any point in Oregon east of The Dalles, as fixed in Tariff L-525, is lower than the rate directly named in the tariff to the same point, then the combination of such transcontinental rate to Portland and the local rate back will govern. Generally the combination rate is lower than the class rates as fixed in the tariff and generally higher than the commodity rates, but commodity rates as now fixed in the tariff from eastern points of origin to some points of destination in Oregon east of The Dalles are greater than the combination made up of the transcontinental rate and the local rate back, as fixed by the order of the commission.

It is alleged in many cases an interstate rate would be affected by the reduction of the local rates and the order is therefore void as an interference with interstate commerce.

WOOL RATES.

Rates on wool from points in Oregon to eastern points of destination, it is alleged will also be affected by a change in the local rates. The rate on wool from Portland to certain eastern points of destination is $1 per hundred pounds. Wool in grease in bales on local shipments takes a third class rate under the western classification. Commodity rates have been named by appellant and other connecting carirers from points east of The Dalles to eastern points of destination on wool. These rates are equal to or less than the combination of the third class rate from points in Oregon east of The Dalles to Portland, added to the Portland rate of $1 to eastern points of destination.

It is alleged that unless the rate from the point in the interior was reduced, direct shipments of wool would cease and the wool be first transported to Portland on the local rate and then east on the through rate, and therefore the order interferes with interstate commerce and is void.

RELATIONSHIP OF RATES—BAKER CITY—PORTLAND.

Under paragraph 22 of the complaint there is an allegation which we assume is intended to state that because the order, if enforced, would change the relationship of rates from California and eastern points of origin to Baker City and Portland, it discriminates in

favor of jobbers doing business in Portland as against jobbers doing business in Baker City. This feature is briefly discussed *infra*.

EFFECT ON COMPETITORS.

Under paragraph 23 there are allegations as to how the effect of this order will be to compel appellant and its connected lines to reduce their rates from eastern points of origin to points east of The Dalles in Oregon. Otherwise the Northern Pacific Railway Company, a competing line, would secure the business. This we will also refer to more at length when we discuss this question.

Reduced to its last analysis the bill shows that interstate rates to points on appellant's lines in Oregon are largely made by using the through rate to Portland as a base and adding to it the local rate.

It is therefore claimed the local rate cannot be changed because such change will affect the through rate, and therefore on all domestic commerce moving under these local rates appellant can charge what it sees fit, *provided* the sum of the two rates do not exceed a reasonable through rate, over which *through rate only* the Interstate Commerce Commission would have jurisdiction.

ORDER DOES NOT AFFECT INTERSTATE RATES DIRECTLY.

It should be also noted it is not alleged that the order attempts to or will directly affect any interstate rate except as the local rates are used in connection with some rule or other rate to arrive at the through rate.

Nor does it have this effect on all shipments. The bill of complaint taken in connection with the tariffs which are a part of it shows the limited application of the order.

DOES NOT AFFECT ALL THROUGH RATES.

For the purpose of this argument it is unnecessary to analyze all the tariffs filed as part of the bill, but the tariffs show that under no circumstances can it affect traffic between Portland and The Dalles, nor any business to which the Pendleton, Oregon, basis of rates applies, nor where there are lower commodity rates, rates lower than the combination of rates referred to or any movement not covered by class rates in the tariff in question. Therefore under the complaint itself, as to some shipments the order would be lawful and on others unlawful, and unlawful only because of the method of rate making adopted by the appellant for its own convenience. In other words the mere convenience of the carrier, a formula to arrive at a rate, is attempted to be used as a basis to deprive a state of a constitutional right, and justify the imposition of unjust and discriminatory rates on domestic commerce.

It would seem that a very obvious and simple expedient would remove this difficulty at far less cost and trouble than an appeal to a court of equity.

If appellant would name and publish its through rate to all points, and if confusion results from naming all its rates in one book, publish its local rates separately, then, except where natural laws control and lawful rights of shippers can be exercised, its cause of complaint would be eliminated.

This, however, is not the real purpose of this and other similar suits now pending in this and other courts, as it is believed will be demonstrated hereafter.

AUTHORITIES.

While it is believed there are decisions controlling this question, there are certain principles which are fundamental and which demonstrate the sophistry of the plea.

Under both the act to regulate commerce and the Oregon act all rates must be reasonable and unreasonable rates are unlawful.

Reduced to its last analysis the argument of appellant leads but to one conclusion: The state has no control over a local rate so long as the local rate is or may be used as a factor in arriving at an interstate rate.

The local rate may be unreasonable and therefore unlawful under the law, but the state, the only authority having jurisdiction, is powerless to enforce the law, because, forsooth, a carrier is using it as one factor in arriving at what may be a reasonable through rate.

That we are not exaggerating appellant's position we quote from the opinion of the court below. (Rec. 66).

> "It seems to be premised by counsel for complainant that the commission's order does not relate to purely internal commerce originating within the State of Oregon, or such commerce as may be appropriately designated intrastate commerce. If this premise be admitted it must be at once conceded that the state commission has attempted to act beyond the scope of its authority. Counsel's premise is at

fault, however. As has been previously shown, the commission presumptively has acted within the scope of its authority, which was to prescribe rates applicable to the transportation of intrastate commerce only. *But beyond this, it seems to be thought that if a state tariff affects an interstate tariff in the slightest measure, though incidentally, it must give way to the latter, and hence is void and inoperative.*" (Italics ours.)

THE APPELLANT IS ORGANIZED UNDER THE LAWS OF THE STATE OF OREGON AND IS SUBJECT AS TO ITS STATE BUSINESS TO LOCAL CONTROL.

The law requires all rates to be reasonable, state as well as interstate, and if a carrier uses a local rate in any way as a factor in arriving at an interstate rate, it does so knowingly and subject to state control.

In *Reagan v. Mercantile Trust Co.*, 154 U. S. 413, it was claimed that because the corporation was incorporated under an act of Congress, that its operations were removed from the control of the state. Passing upon this point the court said:

> "There is nothing in the enforcement by the state of reasonable rates for transportation wholly within the state which will disable the corporation from discharging all the duties and exercising all the powers conferred by Congress. By the act of incorporation Congress authorized the company to build its road through the State of Texas. It knew that, when constructed, a part of its business would be the carrying of persons and property from points within the state and to other points also within the state, and that in so doing it would

be engaged in a business, control of which is nowhere by the Federal Constitution given to Congress. * * * Without, therefore, replying at all upon any acceptance by the railroad corporation of the legislation of the state, passed in 1878 in respect to it, we are of opinion that the Texas & Pacific Railway Company is, as to business done wholly within the state, subject to the control of the state in all matters of taxation, rates and other police regulations."

In *Reagan v. Farmers Loan & Trust Co.*, *supra*, will be found numerous statements sustaining state control. To the same effect see *Smyth v. Ames*, *supra*.

In the case of *Ames v. Union Pacific Railroad Company*, 64 Fed. 165, Mr. Justice Brewer, at page 171 of the opinion, says:

"Again it is insisted that this act interferes with interstate commerce, in two ways: First, it establishes a classification of freights different from that which prevails west of Chicago; and, in the second place, by reducing local rates, it necessarily reduces the rates on interstate business. Neither of these objections seems to me to be well taken. In the first place, the classification of freights by the railroads is a purely voluntary act, not compelled by any statute, and not uniform throughout the country. There is one system which prevails east of Chicago, and one west. It might be more convenient if the classification established by this act harmonized with that adopted by the railroad companies doing business west of Chicago; but surely the voluntary act of the railroad companies, in establishing a uniform classification for certain territory, can work no limitation on the power of the state to establish a

different classification. To say, for instance, that because the railroad companies have voluntarily placed flour in a certain class, on which a specified rate is to be charged, such voluntary act of mere classification destroys the power of the state to establish a classification which puts flour in another class, and subject to another rate, is, to my mind, a most extravagant pretension. Neither can I understand how the reduction of local rates, as a matter of law interferes with interstate rates. It is true the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates, and make them conform to the local rates prescribed by the statute, but surely there is no legal compulsion. The statute of the state does not work a change is interstate rates, any more than an act of Congress prescribing interstate rates would legally work a change in local rates. Railroad companies cannot plead their own convenience, or the effects of competition between themselves and other companies, in restraint of the otherwise undeniable power of the state."

In *Armour Packing Company* v. *United States*, 200 U. S. 56, 82, the court says:

"If the shipper sees fit to make a contract covering a definite period, for a rate in force at the time, he must be taken to have done so subject to the possible change of the published rate, in the manner fixed by statute, to which he must conform or suffer the penalty fixed by law."

A fortiori, if a railroad company sees fit to make a [illegible] rate any part of the formula in arriving at an in-

terstate rate, it must be taken to have done so subject to possible changes made in the local rate by state law.

It appears by the tariffs referred to that many of the interstate rates of complainant would not be affected under any circumstances by the order of the commission. We therefore arrive at a situation where as to some local rates the state has regulative power, but as to others it cannot exercise it, because they are used as a part of a through rate. *The most salient characteristics of a rate considered abstractly, are that it is an entirety, the single charge for the whole service which is performed.*

Beale & Wyman on Railroad Rate Regulation, Sec. 661, is to the effect that the sole, the only test under the law is a simple one.

Is the interstate rate reasonable? If not, it is unlawful. Is the local rate reasonable? If not, it is unlawful. Not whether a terminal rate plus a local is a reasonable rate, or leads to a reasonable interstate rate. These questions do not concern a court. The question is a rate, not a formula. What is to be considered is the lawfulness of the rate, or in other words, its reasonableness.

MEASURING REASONABLENESS OF STATE RATE BY INTERSTATE RATE.

This court has on more than one occasion condemned the practice of attempting to measure the reasonableness of a local rate by an interstate rate over the same line where part of the haul was within and part without the state.

The case of *Louisville and Nashville Railroad Company v. Eubank*, 184 U. S. 27, is sometimes cited as

justifying the claim that a state cannot regulate local rates if by so doing interstate rates may be affected. An analysis of this case shows that the case is not authority for any such contention. In that case the question the court passed on, was whether the state could control an interstate rate within its borders, and stated (page 86), "we fully recognize the rule that the effect of a state constitutional provision, or of any state legislation upon interstate commerce, must be direct, and not merely incidental and unimportant."

And again (page 41): "The vice of the provision lies in the regulation of the rates between points wholly within the state, by the rates which obtain between points outside of and those which are within the state." In discussing the question further the court in the hypothetical case states (page 42): "In thus fixing the interstate rate Congress may most seriously interfere with or regulate interstate commerce, but that it has the right to do; and on the other hand the state by such a statute regulates the local rate, but that it has the right to do."

VICE OF CLAIM ASSERTED BY APPELLANT.

In the case at the bar the vice of the claim asserted by appellant is exactly what the Supreme Court pointed out in the *Eubank* case. Instead of it being a case where state is trying to regulate "rates between points wholly within the state, by the rates which obtain between points outside of and those which are within the state," it is a case where appellant is trying to do exactly that very thing—just what this court condemned.

It is hardly necessary to point out that if a formula by which a given rate is arrived at makes a regulation of local rates an interference with interstate commerce, then in like manner a regulation by Congress which interferes with the formula would affect local rates, and the argument around which one circles would land one where one started and there could be no control by any authority over any rates.

A RATE IS A DEFINITE CHARGE FOR A WHOLE SERVICE.

The argument or suggestion refutes itself and entirely loses sight of what a rate is. A rate is the "definite charge fixed by the person conducting public employment as the price demanded for performing the service asked. The most salient characteristic of a rate, considered abstractly, is that it is an entirety, the single charge for the whole service performed."

Yet in this case appellant not only seeks to measure a local by a through rate, but does more, *claims absolute control over it irrespective of its reasonableness.*

If its contention is sound, there is no limit to the local changes it might make through the operation of its formula.

The case of *Gulf, Col. & Santa Fe R. R. Co. v. State of Texas*, 204 U. S. 403, previously discussed, completely covers the point raised.

See also:

Southern R. Co. v. Hunt, 42 Ind. App. 90.

State v. Mo. Pacific Ry. Co., 76 Kan. 407.

Coe v. Errol, 116 U. S. 517.

Texas etc. R. R. Co. v. Sabine Tram. Company, 121 S. W. 256.

Augusta Brokerage Co. v. Central of Georgia R. R. Co., 5 Ga. App. 187.

In *State v. Southern Pacific Company,* 23 Ore. 424, the Supreme Court of Oregon sustained an order made by the state railroad commission in establishing a schedule of rates over the lines of the Southern Pacific Company in Oregon.

It is conceded that the state has control over intrastate rates, but it is urged this control can be eliminated by the simple expedient of using a local rate as one of the factors in framing an interstate rate.

TRAFFIC EITHER STATE OR INTERSTATE.

In *Trammel v. Clyde Steamship Company et al.,* 4 I. C. C. Rep. 120-189, the Interstate Commerce Commission says:

> "Traffic is either state or interstate traffic according to its origin and destination. It is shipped by the consignor in the state where the consignee dwells, or it is not. If not, it is interstate traffic, and when carried over two or more lines it is, by the fact of having been received, forwarded and delivered as one through shipment, transported under a common control, management or arrangement, as the case may be, for continuous carriage or shipment. * * *
>
> "The addition of a local rate to a reasonable through rate in order to fix the through charge to the local station is liable to produce

a relatively unreasonable rate to that station. The difference in situation of the basing and local points in respect of through traffic is not properly measured by the local rate for carriage between them. The reasonableness of the added local, *as a local rate, is not under consideration in a case where the rate complained of is the total charge over different lines.* The total rate or charge for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; *how the rate or charge is made is only material as bearing upon the legality of the aggregate charge, and how any reduction ordered may be accomplished, whether by lowering locals or proportions, is matter for the carriers to determine among themselves.*"

See also:

Wells-Higman Company v. Grand Rapids Indiana Railway Co., 19 I. C. C. Rep. 487.

Dobbs v. L. & N. R. R. Co., 18 I. C. C. Rep. 210.

RIGHT OF CARRIERS TO ADVANCE STATE LOCALS IRRESPECTIVE OF CONTROL OF INTERSTATE COMMERCE COMMISSION OVER THROUGH RATES.

Carriers have a right to advance state local charges irrespective of through rates under the control of the Interstate Commerce Commission. If an order required a through rate not to exceed the sum of the locals, the carriers could advance the locals and thus defeat the order. The only way to overcome this situ-

ation is for the commission to fix the through rate. The commission would have no control over the locals.

Mich. Buggy Co. v. G. R. & I. Ry. Co., 15 I. C. C. Rep. 297.

See also:

Kurtz v. Pa. Co., 16 I. C. C. Rep. 410.

Montgomery Freight Bureau v. Western Railway of Ala., 14 I. C. C. Rep. 150.

Marshall Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. Rep. 210.

Morgan v. M. K. & T. Ry. Co., 12 I. C. C. Rep. 525, 528.

Brabham v. Atlantic C. L. R. Co., 11 I. C. C. Rep. 464.

Assuming that the rates fixed by the commission are reasonable and lawful (and this is what appellant concedes under the law they must be), appellant's contention would lead this court to say that the law appellant admits must be observed, shall be violated, and the officers of the state be enjoined from complying therewith and the people of the state be deprived of what under the law they are entitled to, at the option of the railroad. The decisions on this question under anything like similar conditions are unanimous against the position taken by the complainant.

Wabash, St. Louis P. R. R. Co. v. Illinois, 118 U. S. 557.

Gulf, Col. & Santa Fe R. Co. v. Texas, 204 U. S. 403.

General Oil Co. v. Crain, 209 U. S. 211.

Ames v. Union Pacific R. Co., 64 Fed. 165-171.

St. Louis & S. F. R. Co. v. Hadley, 168 Fed. 817.

Southern Ry. Co. v. Hunt, 42 Ind. App. 90.

State v. Mo. P. Ry. Co., 76 Kan. 467.

Morgan v. M. K. & T. Ry. Co., 12 I. C. C. Rep. 525-528.

Lincoln Commercial Club v. C. R. I. & P. R. Co., 18 I. C. C. Rep. 319.

Montgomery Freight Bureau v. Western Ry. of Ala., 14 I. C. C. Rep. 150.

Marshall Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. Rep. 210.

RATES MADE BY STATE AUTHORITY ARE NOT REGARDED AS BINDING BY THE INTERSTATE COMMERCE COMMISSION, "AS A NECESSARY MEASURE OF THE INTERSTATE RATE."

Saunders v. Southern Express Co., 18 I. C. C. Rep. 415, 421; *Hope Cotton Oil Co. v. T. & P. R. Co.*, 12 I. C. C. Rep. 265, 269.

And as has been said "conversely under these decisions it is difficult to see why the state should be bound to adopt interstate rates; for, although the federal power is supreme respecting interstate rates, that would leave the state with no power at all in regard to local rates."

Yet that is exactly what is being attempted here. The facts and reasoning of the court in *Mo. Pac. R. Co. v. Kansas*, 216 U. S. 262, are apt and in point.

In discussing the effect of the order complained of upon interstate commerce the court (at p. 283) said: "But this simply confounds the distinction between state control over local traffic and federal control over interstate traffic. To sustain the proposition would require it to be held that the local traffic of the road was free from all governmental regulation." Again at page 284:

> "The order cannot be said to be an unreasonable exertion of authority, because the power manifested was made operative to the limit of the right to do so. Besides, the proposition erroneously assumes that the effect of the order is to direct the stoppage at the state line of an interstate train, when, in fact, the order does not deal with an interstate train, or put any burden upon such train, but simply requires the operating within the state of a local train, the duty to operate which arises from a charter obligation." * * * And again: "But under the hypothesis upon which the contention rests, the operation of the train to Butler would be at the mere election of the corporation, and, besides, even if the performance of the duty of furnishing adequate local facilities in some respects affected interstate commerce, it does not necessarily result that thereby a direct burden on interstate commerce would be imposed."

It thus appears under this decision this order is not a direct interference with interstate commerce, but indirect, and only then at the option of the railroad com-

pany, which is not compelled to use any particular formula in arriving at a through rate, or use the local as any part of it.

It is suggested that other roads terminate at Portland and interstate traffic can move over them and thence on a local rate to destination, and appellant compelled to meet the competition. This certainly furnishes no reason for maintaining unreasonable local state rates, either to enable appellant to maintain higher rates, to better control the traffic or to secure greater revenue. On this hypothesis, on the through rate the shipper could secure relief through the Interstate Commerce Commission which commission does not concern itself either with local rates or divisions, but with the rate as an entirety, while on local traffic the shipper would be powerless, with no forum to appeal to.

THE PLEA IS UNSOUND AND SOPHISTICAL.

From any view point one may examine it the proposition is sophistical and unsound.

The court is dealing with a case wherein reasonable rates have been fixed for state commerce and in the manner provided by law. Other than mere allegations of opinion, there is not a statement of fact in the bill to show the rates fixed for the service rendered are not just and reasonable. The court is asked to set aside this order and enjoin the collection of reasonable rates for state traffic because of an alleged interference with interstate commerce as above outlined. The court is asked to declare a lawful rate unenforceable and to de-

ere that unlawful rates can be exacted on all state commerce because of an alleged interference with some interstate commerce.

COMPETITIVE LINES OF TRANSPORTATION.

There are other lines of transportation than appellant's by sea from California to Portland and by both rail and sea from points of eastern origin to Portland.

This competition might very naturally result in competitive rates to Portland, but because appellant is one of the competitors and names through rates, with the local rate in Oregon as one of the factors, is the state to be deprived of the right to enjoy reasonable rates on domestic traffic? Is a shipper, who chooses to employ a competing line to Portland, to be deprived of a reasonable rate to distribute goods from his stock in trade? Are the public to be deprived in a measure of the benefits of water or other competition by the maintenance of unreasonable local rates because of it?

As illustrative of how this would be the effect of appellant's contention, note the method used in naming rates from California points to points in Oregon. The rate is made by adding certain "arbitraries" or local rates to Portland to the local rates from Portland.

If the "arbitraries" combined with local rates out of Portland make a reasonable through interstate rate, under appellant's views no authority has power to enquire into the reasonableness of the local rate out of Portland, as that would interfere with interstate commerce if changed.

The controlled steamship line will not complain about its divisions and the through rate being reasonable, no authority can interfere.

By making the water "arbitrary" or rate to Portland low enough competition is discouraged, and with the power to regulate the local rates eliminated the public is without protection and the law requiring reasonable rates within the state is a dead letter.

THE CIRCUIT COURT'S DISCUSSION.

In discussing appellant's theory of the alleged interference with interstate commerce by changing the local rates on intrastate traffic, the court said (Rec. 66-67):

> "It seems to be premised by counsel for complainant that the commission's order does not relate to purely internal commerce originating within the State of Oregon, or such commerce as may be appropriately designated intrastate commerce. If this premise be admitted, it must be at once conceded that the state commission has attempted to act beyond the scope of its authority. Counsel's premise is at fault, however. As has been previously shown, the commission presumptively has acted within the scope of its authority, which was to prescribe rates applicable to the transportation of intrastate commerce only. But beyond this, it seems to be thought that if a state tariff affects an interstate tariff in the slightest measure, though incidentally, it must give way to the latter, and hence is void and inoperative. For instance, it is alleged that if the state commission's rate becomes effective many persons will ship their commerce from without the state to Portland, and then reship to points east of The Dalles; or, in another way, wool will be shipped to Portland from points east of The Dalles, and thence east by the transcontinental

rates, and thus the complainant will be compelled to re-establish its rates in order to retain its through haul from Eastern Oregon points. In other words, interstate traffic will thereby be interfered with, disturbed, and disarranged.

"It is, and always will be, a difficult question to determine as to when and what commerce should be classified as interstate, and when and what should be classified as intrastate. The question depends largely upon the facts and circumstances attending each case as it arises. There can be no doubt that commerce originating within the state and carried to some other point within the state is intrastate commerce. So it is of commerce originating within the state and transported, by continuous carriage, from within to some point without the state, or originating without the state and carried within—that is to be classified as interstate commerce. But when intrastate becomes interstate commerce and *vice versa*, is an inquiry involving nice distinctions, perhaps. But we are not concerned with that at the present time. We are dealing with the distinct question of the supposed conflict between the regulation of interstate and intrastate commerce. Let us take a commodity, for instance, manufactured in Portland. Let it be agricultural implements. The state has a perfect and undoubted right to regulate the tariff for transportation of such commodity by rail to any part of the state from Portland, so that the tariff be reasonable; and I may say to any point on complainant's lines, within the state, east of The Dalles. If that regulation interferes with present tariffs for interstate

transportation of the same commodity from common points east of the Mississippi or Missouri Rivers to points on complainant's lines east of The Dalles, who can say nay? But to go a step farther: The same commodity may be shipped to Portland from without the state, and put in common stock. When the commodity thus comes to rest in the state, and is sold by the dealer for transportation from Portland to some other point within the state, it is as much intrastate commerce as the case just put, and the state may, with equal authority, regulate the freight tariff. This is a condition of which complaint is made lest it be that dealers will take advantage of the local rate, and, selling to customers within the state, ship first to Portland at the transcontinental rate, and thence out to the interior at the local rate. A shipment from the East, via Portland, to a point within the interior of the state, would be interstate commerce; but whether such a shipment could be made to take the classification of interstate commerce by shipment to Portland in the name of the dealer, and then of intrastate classification by the dealer billing it out of Portland again to his patron in the interior, is another question, which we need not decide. It remains clear that whenever the commodity partakes of the characteristic of intrastate commerce, the state has the right to fix the rates of tariff for its transportation wholly within the state."

EFFECT ON WOOL RATES.

The allegation as to the effect on the wool rates is particularly illuminating as showing the extent to which appellant would go in the application of its doctrine.

The tariffs in evidence show the only rates applicable to wool on intrastate movement are found in classes 2 and 3, next to the first class, the classificiations and carrying the highest rates. There are no state carload rates.

Within the state, under the tariff the rate per hundred on a carload is no less per hundred than on a single sack. It appears from the complaint on account of ocean competition at Portland a commodity rate is made from Portland to eastern points of destination of $1 per hundred. From all interior points the through rates by the tariff to eastern points are generally, if not always, equal to the combination of the local rate to Portland plus the $1 rate from Portland. Therefore the more distant the point from Portland, the higher the rate, both to Portland and the the eastern point, and necessarily the greater inducement to maintain very high locals.

Appellant alleges that if the local rates are reduced to Portland, it will either have to reduce its through rates from the interior points to eastern points, or the wool will move first to Portland and then back. Thus it is claimed interstate commerce is interfered with.

In other words, to deprive the community of the benefit of water competition, to enable appellant to maintain a rate to New York and Boston thus constructed the shippers of wool and manufacturers and users of woolen garments within the state of Oregon are to be condemned to pay excessive rates on all local shipments of wool.

Astounding as this statement may appear, it is in the record and as one of the facts relied on to deprive the state of any control over the state rates or local shippers of any tribunal to which to appeal for redress. On this point the Court below said (Rec. 67-68):

> "Take the case of wool again, purchased in Eastern Oregon. If that be shipped to a buyer in Portland, why is it not intrastate commerce? That same wool, after being thus shipped to Portland, if it be that such buyer subsequently sells to a buyer in Boston and ships to him at that place, would become interstate commerce. If bought in Eastern Oregon for transportation to Boston by way of Portland, the local state rate could not apply, because that would partake of the character of interstate commerce."

In argument below it was asserted by appellant that the through rate could not exceed the sum of the locals without creating an unjust discrimination. In this connection it will be observed that the rates referred to between Eastern Oregon points and Portland are not local intermediate rates to eastern points, but are rates for a back haul over a line of railroad.

BAKER CITY SITUATION—RATE RELATION.

Paragraph XXII of the Bill of Complaint, reduced to a statement means that, under the rates as constructed, Baker City merchants can sell to a certain distance from Baker City and Portland merchants a certain distance from Portland, so that a change in the rates disturbs the relationship and under the order Portland merchants can sell further as against Baker

City merchants than they could under the arrangement and tariffs as fixed by appellant. Therefore the order attempts to regulate movement as well as rates in interstate traffic. Nothing is alleged in this paragraph as to the reasonableness or unreasonableness of the rates.

It will be noted that the logic of appellant's contention has now driven it to the point of asserting that a mere change in relationship or a change that will affect movement is an interference with interstate commerce forbidden by law, thus putting it in the control of the carrier through its power to name rates, to say who and who shall not do business, and in what territory one can trade. In this connection we point out that this is the only allegation in the bill which even indirectly alleges any discrimination is effected by the enforcement of the order. This, it is obvious, is not a discrimination as against interstate traffic, and can have no good result.

EFFECT ON APPELLANT'S THROUGH RATES BY THE USE OF COMPETING LINES.

Under paragraph XXIII, it appears the Northern Pacific Railway with its connections forms a route over which freight is moved from eastern points to Portland at the same rate as over the lines of appellant and its connections. That if the rates ordered by the state commission became effective, freight to points east of The Dalles, on appellant's lines would move via the Northern Pacific lines to Portland and thence on local rates to destination, unless appellant reduced all its rates to points on its lines east of The Dalles to an

amount equal to or less than the combination of the terminal or Portland rate plus the local rates fixed by the order. That if it did not meet this rate large quantities of interstate traffic would be diverted.

Here the allegation of interference with interstate commerce is based on the fact that local rates must not be disturbed; otherwise competitors will secure business unless the competition is met.

The discussion of these two propositions by the Court below is both cogent and pertinent (Rec. 69-70):

> "The Baker City situation is relied upon as a demonstration that the local or state rates, if approved, will unsettle interstate regulation, or rather will disturb the situation as it now stands. That city is engaged in a jobbing business, and is importing merchandise from points east of the Missouri River and in California, which it sells to customers within a certain radius of territory in job lots. Under tariff U. P. I. C. C. No. 1578 and No. L-525, the Baker City jobbers pay a freight rate from point of origin in the East or in California generally equal to the carload rate to Portland plus the carload rate from Portland to Baker City, and are required to pay the less than carload rate from Baker City to points of distribution. Now, the Portland jobber is required to pay the carload rate from point of origin in the East and in California to Portland and the less than carload rate from Portland to point of distribution. So it is, says the complainant, that the profit of the Baker City jobber and his ability to sell merchandise depend upon the difference between the car-

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load rate out of Portland and the less than carload rate from Portland to the point of distribution. It is further claimed that the rates established by the commission's order in comparison with those fixed by L-525 greatly decrease the difference between the carload rates and the less than carload rates from Portland, 'so that interstate traffic originating in the East and in California, and so in the past distributed from Portland and from Baker City, respectively, can only be distributed advantageously, and with profit, from Portland to all points in Eastern Oregon,' and, therefore, that the commission's order attempts to regulate the movement of, as well as the rate charged upon interstate commerce. *This is only an illustration of how rate-making may destroy and build up jobbing centers, considering the facts stated to be true, and the deduction legitimate. But transportation companies do not have, nor can they longer claim, a monopoly upon rate-making. Suppose, however, Portland was able to supply from home production all the different kinds of merchandise that the Baker City jobber wanted in his trade. A reasonable freight rate made by the state for the transportation of the merchandise to Baker City and interior points would be perfectly legitimate. If that rate enabled Portland, through its home produced merchandise to displace the business of the jobber in Baker City dealing in like merchandise imported from other states, how could it be said that the state freight tariff was unconstitutional, and therefore unlawful? The state rate does not apply to interstate commerce; nor was it designed so to apply. But if the Portland merchant imports his goods*

and then jobs them from Portland, the result will be the same as if he were dealing in home products, because the importations will have become domesticated. If that method of dealing constitutes or induces a change in the movement of interstate commerce, it is the thing that the merchant will or will not do as his profits in business may impel him. The movement of his merchandise when it goes out of Portland to the interior of the state is intrastate. I am not speaking now of goods imported to Portland in original packages, and then shipped out to points in the interior of the state in like packages as shipped to Portland, because I am not now called upon to determine whether such character of movement would constitute interstate traffic. It will be time enough to decide such case when it arises. I have reference to such merchandise as may be first imported to Portland, and then, going into a wholesale dealer's common stock, is wholesaled or jobbed out to customers in the interior of the state—such a movement of merchandise from Portland to the interior of the state as would constitute intrastate shipment pure and simple. If this kind of traffic, with the freight rate imposed upon it by the state, is of such proportions and such percentage as to affect trade in interstate merchandise, and therefore render it advantageous to interstate lines to change their rates so as to control the trade in certain channels, that is not a trenching upon the exclusive authority of Congress to regulate interstate commerce. The interference is but incidental, and flows from a perfectly legitimate regulation of freight rates by the state, and an altogether natural move-

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ment of trade; and the condition is absolutely beyond the control of Congress. That I may be fully understood, I will allude to another incident. Counsel for complainant says:

"'If the Northern Pacific Railway should receive at Tacoma freight destined to a point in the State of Oregon east of The Dalles, such merchandise would be moved from Portland to the points east of The Dalles over the lines of the complainant, and the rates charged therefor would be the class rates fixed by Tariff No. L-525 filed with the Interstate Commerce Commission as required by the interstate commerce act. By the order sought to be set aside the complainant would be required to charge not the rates fixed by Tariff L-525, but the rates established by the order of the commission.'

"In this statement counsel is mistaken. The shipment would constitute an interstate shipment, and L-525 would prevail as against the state rate. *So, if it be that the local state rates, as fixed and regulated by the State Railroad Commission on these commodities, unsettle in some way previously fixed transcontinental or interstate rates, that circumstance does not render the state rates invalid as an interference with interstate commerce. Let it be supposed that the state was the precursor in making rates for the transportation of purely intrastate commerce, there could then, at that juncture, be no conflict. Could it be contended that the state rate was invalid because connecting railroads might desire to establish a transcontinental rate in combination with a local rate, also of their own making, which would conflict with the state rate? If so, the fixing*

of a state rate would be a precarious and evanescent thing, to be dissipated at the caprice of the transportation companies, and the general government would usurp, in practical effect, the functions of the state government in the regulation of intrastate commerce. Such was not the purpose of the framers of the federal constitution. Nor was it the purpose of Congress itself in the adoption of the interstate commerce act, wherein was recognized, as has been noted before, the right of the state to regulate commerce wholly within its borders. The bill, therefore, in my opinion, states nothing that renders either the State Railroad Commission act or the order of the commission in conflict with the commerce clause of the federal constitution. This conclusion is borne out by the decisions of the Supreme Court." (Italics ours).

LATE CASES PASSING ON ALLEGED INTERFERENCE WITH INTERSTATE COMMERCE BY ORDERS OF STATE AUTHORITIES FIXING STATE RATES.

Of late, as is evidenced by the records in this court, there is internal evidence that a new line of attack upon railroad regulation has been formed. Originally the attack was centered upon the power of the Interstate Commerce Commission to name and enforce reasonable rates. Now it appears in two forms, first, to have established as a principle that rates made by authority, national or state, must be fixed on a basis that will yield a reasonable net return on the reproductive value of a railroad based upon impossible and imaginary conditions.

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This question is not in this case.

Second, to have established as a principle under which the naming of a rate by state authority that in any way conflicts or interferes with an interstate rate, is an unlawful interference with interstate commerce.

So far has this fiction been extended that in this case a change in relationship of state and interstate rates, if caused by change in intrastate rates, is adjudged to be an unlawful interference. A change in a rate that may affect the movement of freight is also alleged to be an unlawful interference.

It is submitted that the facts, as shown by the records, justify the inference above made for in nearly all, if not all, the circuit's suits predicated on this theory are pending or are now on appeal in this court or in process of being appealed.

The reason for this attack is apparent and the result if successful equally apparent.

PURPOSE OF ATTACK TO ELIMINATE STATE COMMERCE FROM ANY REGULATIVE AUTHORITY.

It is evident Congress cannot regulate state commerce, the state cannot regulate interstate commerce; therefore, if the railroads can maintain their theory, that any rate fixed by a state which indirectly affects an interstate rate is an unconstitutional interference with interstate commerce, the regulation of all state commerce is at an end. There is no difficulty whatever in making any interstate rate by tariff rules include a state rate, over which under this theory no authority would have control, and this, and this alone, is the reason for this latest form of attack in state regulation.

In *Mo. Pac. R. Co. v. Kansas*, 216 U. S. 262, the court is discussing a question involving this same principle, said (page 283):

> "To sustain the proposition would require it to be held that the local traffic of the road was free from all government regulation."

In *Louisville & N. R. Co. v. Siler*, 186 Fed. 176, at page 200, the court speaking to the identical question said:

> "The logic of the company's argument would release its local rates from governmental regulation altogether; for the United States could not fix the local rates, because they are local, and the state could not change them, because it would thereby cast a direct burden on interstate commerce. The inevitable effect would be that, so far as rate-making is concerned, the State Railroad Commission would have no reason to exist, and state regulation of state rates would become simply historic."

In *Re Arkansas Rate Cases*, 187 Fed. 209, 222, the court says:

> "If complainant's contention is correct, transportation companies, so far as the exclusively internal commerce of a state is concerned, are beyond all control, either from the state or national government; for, as determined in *Gibbons v. Ogden*, *supra*, the constitution excluded that class of commerce from the powers vested in Congress by the commerce clause, and, as all state rates indirectly affect interstate rates, they are, if complainant's contention is right, also void. See also on this point the *Employers' Liability Cases*, 207 U. S. 463, 493.

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"The result of such a construction would be that the states do not possess one of the most important powers inherent in every government. The adoption of such a construction by the courts would be justifiable only if any other would do violence to a plain provision of the national constitution or principles of law so firmly established by previous decisions of the highest court of the land that there is no longer room for construction. In the language of Mr. Justice Peckham in *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 231:

"'If neither Congress nor the state legislatures have such power, then we are brought to the somewhat extraordinary position that there is no authority, state or national, which can legislate upon that subject or prohibit such contracts. This cannot be the case.'"

AUTHORITIES.

The question before the court has been passed on directly in a number of cases, and in all but one the power of the state was upheld.

In the case of *State v. Northern Pacific Ry. Co.* (Sup. Ct. N. Dak.), 120 N. W. 869, the judgment in which was affirmed by the Supreme Court of the United States in *Northern Pac. Ry. Co. v. North Dakota*, 216 U. S. 579, the state court held that a state statute fixing coal rates between points within the state, was not a regulation of interstate commerce as applied to interstate lines. The court said:

"It is finally urged by defendant's counsel that the act in question violates the interstate commerce clause of the federal constitution. Their argument is necessarily predicated upon

the assumption that state regulation of local rates on interstate lines amounts to an interference with interstate commerce, as the act assailed, upon its face, merely purports to establish maximum rates for transporting coal in carload lots between points within the state. This question is not open to debate, as the court of last resort in this country has repeatedly held adversely to counsel's contention."

After quoting from *L. & N. R. Co. v. Kentucky*, 183 U. S. 503, the court said further:

"It is but fair to counsel for defendant to state that they concede that, up to this time, the decisions of the United States Supreme Court on this point are uniformly opposed to their contention. Even if we were disposed to entertain the views expressed by Judge Lochren in *Perkins v. Northern Pacific R. Co.* (*C. C.*), 155 Fed. 453, which we are not, we should feel it our duty, as did Judge Lochren, to yield to the judicial utterances of the final arbiter on this question."

That question was not discussed by the Supreme Court of the United States in affirming the judgment, but the court said that the mere fact that the state court had held that the statute applied only to transportation wholly within the borders of the state disposed of the objection that the statute was a regulation of interstate commerce.

The case of *Woodside v. Tonopah & G. R. Co. et al.*, 184 Fed. 352, was heard by Judges Morrow, Farrington and Van Fleet.

We quote from the syllabus:

> "A rate fixed by a state railroad commission for intrastate traffic, if just and reasonable in and of itself, cannot be held to be unlawful and discriminatory because it may conflict with some rate fixed by the railroad company for interstate traffic."

The case of *Louisville & N. R. Co. v. Siler et al.*, 186 Fed. 176, is very illuminating. In this case the court discussed due process of law, deprivation of property, right of review, state regulation, penalties, impairment of contracts under rights given by a railroad charter, jurisdiction of federal courts, and indirect effect on interstate rates through state regulation of rates.

In passing upon the questions, the court held as did the court below in this case, and it is now pending here on appeal.

The court, *inter alia*, held that the fact that a railroad company in making its through rates has taken the sum of the local rates in each state in order to make the through rate does not remove such local rates from the jurisdiction of the state for the purpose of regulation, nor does the fact that a reduction of local rates by the state may incidentally place the company under the business necessity of reducing its interstate rates affect the legality of such reduction.

In re Arkansas Rate Cases, 187 Fed. 290, the same question was presented and discussed at length by the court and the various decisions analyzed. The court's conclusions were the same as in the cases cited.

On this point we quote from the syllabus:

> "Rates established by a state for the intrastate carriage of freight or passengers necessarily indirectly affect the interstate rates; but that fact does not render the establishment of such rates unconstitutional, as an interference with interstate commerce."

In the case of *Southern Pacific Co. et al. v. Campbell* (U. S. Cir. Ct. Dist. of Oregon, July 3, 1911), the precise question as that presented in the the case at bar was submitted, and the court, by Bean, J., announced its full concurrence with the views as expressed in the opinion of Judge Wolverton in the case at bar.

Shepard v. Northern Pac. Ry. Co., 184 Fed. 785, is the only case lending any countenance to appellant's contention.

We do not deem it necessary to analyze this case. What is believed to be the law as settled by this court has already been submitted. The court, however, was careful to say that the case was decided on the particular facts. At page 797 of the opinion the court says:

> "The reduction of local rates does not interfere with interstate rates 'as a matter of law,' yet it may do so as a matter of fact. Whether or not the general and sweeping reductions in local rates in Minnesota necessarily interfere with interstate rates and interstate commerce is in this case, as it must be in every case, a question of fact. The facts which determine that question in this case have been set forth in this opinion at great length, because it is upon them, and not upon legal inferences, that the answer to the question, whether or not the effect of the necessary operation of the

acts and orders challenged is substantially to burden interstate commerce, now rests. * * * The opinion of Mr. Justice Brewer in the *Ames Case* is inapplicable to the cases in hand because no such array of condemnatory facts was ever submitted to him in that case, and it is perhaps not too much to say that no case has been found in the books in which any such proof of the unavoidable effect of general reductions of intrastate rates to substantially burden and directly regulate interstate commerce has ever been presented."

The facts as stated in the opinion are so different from those in the case at bar that it readily distinguishes itself.

TIME WITHIN WHICH INTERSTATE RATE CAN BE CHANGED.

Under paragraph XIX (p. 14 Rec.) it is alleged "no interstate rate contained in any of the interstate tariffs hereinbefore mentioned can be changed without giving of thirty days' notice."

It is also alleged that under the terms of the order the rates prescribed shall be put into effect within twenty days from the date of service, and that, therefore, in order to comply with the terms and conditions of the order, appellant would be compelled to violate the act of Congress and regulations promulgated by the Interstate Commerce Commission, and in this particular the order is an attempt to regulate commerce and is void.

This paragraph, doubtless through inadvertence, does not state the law correctly.

First. The act of Congress, while providing for the giving of thirty days' notice, further provides "that

the commission may in its discretion and for good cause shown allow changes upon less than the notice herein specified," etc. (Act to Regulate Commerce, Sec. 6).

Second. Rule 14 of the Interstate Commerce Commission provides for permitting changes on short notice.

Third. Rule 56 of the Interstate Commerce Commission provides for changes, where a joint rate or rate by a given route between any points is higher than the sum of the locals between the same points, on one day's notice.

Therefore, the allegations contained in this paragraph, which on their face are at variance with the law and the facts, cannot state a cause of suit or be the basis of a charge of an attempt to regulate interstate commerce by the state commission of Oregon.

It might be suggested further that Tariff L-[illegible] contains both state and interstate rates, and the change in the local rates is not controlled by the rules or regulations of the Interstate Commerce Commission or the act to regulate commerce.

A local rate within a state may be changed without the necessity for such notice as is required by the act to regulate commerce of a change in an interstate rate.

Morgan v. M. K. & T. Ry. Co., 12 I. C. C. Rep. 525-528.

POSSIBLE CHANGES OF RATES IN THE STATE OF WASHINGTON BY STATE AUTHORITIES.

A hypothetical question is presented by paragraph XXI (Rec. 15) wherein it is suggested that, if the state of Washington should establish the same rates in Wash-

ington as those provided in the order in question, then the interstate rate charged by appellant from points in Oregon to points in Washington "could not be lawfully or practically greater than the sum of the respective local rates so attempted to be established by the states of Oregon and Washington, and therefore the said interstate rate would be wholly and necessarily established by the said respective states to the exclusion of and contrary to the sole and exclusive control, which should properly be exercised thereover by Congress under the constitution of the United States and by the Interstate Commerce Commission pursuant to the act to regulate commerce hereinbefore mentioned."

This paragraph is argumentative, based upon a hypothesis and a presumption the law does not recognize and upon a statement that is not in exact accordance with the law.

Under the law the presumption that attaches to rates prescribed by commissions, is that they are reasonable. Any rate, state or interstate, that is unreasonable would be unlawful and therefore could not be sustained. The court will presume that rates established by lawful authority are reasonable. Irrespective of this presumption it would be difficult to see, generally speaking, why the sum of two reasonable local rates would not make a reasonable through rate over the same line, in the same direction, for the same distance. Particularly is this the case when, generally speaking, a through rate is lower than the sum of the locals, a practice which has received the approval of this court.

Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257-262.

While the Interstate Commerce Commission has announced that, generally speaking, its policy would be to consider the through rate or fare, which is higher than the sum of the locals between the same points as prima *facie* reasonable, and the burden of proof would be upon the carrier to defend such higher through rate or fare, at the same time it is frequently held that the sum of the locals does not necessarily or lawfully fix the through rate, nor would such rate be necessarily established by the sum of the locals.

Brabham v. Atlanta C. L. R. Co. et al., 11 I. C. C. Rep. 464.

Morgan v. M. K. & T. Ry. Co., 12 I. C. C. Rep. 525-528.

Montgomery Freight Bureau v. West. Ry. of Ala., 14 I. C. C. Rep. 150.

Marshall Oil Co. v. C. & N. W., 14 I. C. C. Rep. 210.

We, therefore, submit that such allegations as the foregoing do not state a cause of suit or present any issue to be tried.

OBJECT OF SUIT.

It is manifest from the bill of appellant, the meagerness of fact therein stated, the general character of the allegations as to the unreasonableness of the rates

that the effect on the revenue of the appellant is not the moving cause of this suit. Its real purpose is:

First. To make the state railroad commission a "useless piece of machinery," to eliminate the power of the state directly or through an administrative body to fix rates or control or regulate railroads within the state.

Second. To eliminate its power to enforce any order it may make, so that any action taken by it would be merely advisory; and, if an order did not suit the purpose or convenience of the carrier, or was objected to by it, then and without question and as a matter of right, to have a court pass upon the mere reasonableness of an order before it becomes effective.

In other words, appellant's purpose is to make the courts, instead of the commission, the administrative body to carry into effect the legislative will.

The distinction between the action of a court, what it may consider and its powers, and that of a legislature or an administrative body, and what they may consider and their powers, is fundamental and vital, and the lines of demarcation are clearly marked and always recognised.

Courts cannot prescribe rates for the future. Moreover it is extremely difficult if not impossible, under judicial procedure and the practice and rules of law applicable to evidence, for a court to investigate a rate question or to determine the mere reasonableness of a rate in all of its bearings. Wherever it has been tried it has proven a failure and been abandoned, and all experience shows, as has been repeatedly found by the

courts, that the only successful method of the regulation of public service corporations is through administrative bodies to carry out the legislative will.

We submit the following principles applicable to the issues in the case before the court, are settled both on principle and authority:

1. Congress has power to regulate and control interstate commerce and as to that commerce its authority is supreme.

2. The state has power to regulate and control intrastate commerce and as to that its authority is supreme.

3. The interference by the state with interstate commerce to be unlawful must be direct, and not the merely incidental effect of enforcing the police power of the state.

4. When the carrier uses a local rate as a factor in making a through rate it does so knowing that all such local rates are under the control of the state and subject to its regulation. Nor does the fact that a reduction of local rates by the state may incidentally place the company under the business necessity of reducing its interstate rates affect the legality of such reduction.

5. The Interstate Commerce Commission has no control over state commerce. If the state cannot control it we have a condition whereby a very large portion of the commerce of the United States will be under no control and beyond restraint and the states deprived of a power inherent in every sovereignty.

6. A judicial inquiry is limited to ascertaining whether or not a rate is confiscatory, not whether it is reasonable in the ordinary meaning of the word.

7. Confiscation cannot be predicated of a particular rate or group of rates. It must be shown that the entire body of rates within a state are so unjustly low as to deprive the carrier of reward, and amount to taking of the property.

8. If rates are so unreasonably low as to amount to confiscation the court may enjoin the operation of the order fixing such rates. The burden is upon the carrier to make this appear clearly and beyond doubt.

9. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of the public highway than the services rendered by it are reasonably worth.

10. The public interest is paramount and a carrier is not entitled to any given per cent on its investment, nor to any profit, if in order to secure them excessive rates are necessary.

11. Whether particular rates under all the circumstances are just and reasonable as between the carrier, the shipper and the public is a legislative, not a judicial, function.

12. Where a rate is attacked general allegations of unreasonableness or confiscation state no cause of suit. Facts must be alleged from which the court can arrive at an independent conclusion.

The order affects and is intended to affect intrastate rates only. What is state commerce has been clearly defined by this court. Any other class of traffic cannot be affected. This court will not indulge in the presumption that the state of Oregon will interfere or

attempt to interfere with interstate commerce. The only difficulty even under appellant's contention arises from its own conduct.

The interference alleged is the result of the voluntary use of local rates as such in arriving at the total of through rates. This could be easily remedied without an appeal to the chancellor, without injunctions or appeals to courts at all.

No charges of discrimination are made, no figures submitted or facts stated that give the court the slightest intimation as to the effect the change in rates will have on the earnings of the appellant if any.

The state of Oregon has nothing whatever to gain by any course except that of entire fairness and frankness, not only in its dealings with the court, but with all of its citizens.

If it had not been felt that the bill of complaint stated no facts constituting a cause of suit, and that such issues as are presented are of law only, an answer would have been made to the bill.

It will not be assumed that the railroad commission of Oregon would misuse its great powers or treat unfairly in any respect any citizen, individual or corporate.

We have discussed the law and the facts at length. We have been impelled to do this by the consciousness that a great principle is at stake, a principle as old as the constitution itself—the right of the respective states to control and regulate their domestic commerce.

It is perfectly apparent that, if the contention of appellant is sustained, the carriers would be released as

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to their local rates from all government regulation, and, as was stated by the court in *Louisville & N. R. Co. v. Siler, supra*:

> "The inevitable effect would be that, so far as rate making is concerned, the state railroad commission would have no reason to exist, and state regulation of state rates would become simply historic."

It is not to be wondered, therefore, before accepting such a doctrine, the court desired to recall the views of the Supreme Court "touching the power of the state to regulate commerce carried on exclusively within its borders."

The rule announced in *Gibbons v. Ogden*, defining the meaning of the words of the commerce clause of the constitution, has been recognized and accepted as the law ever since announced by Chief Justice Marshall:

> "It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state or between different parts of the same state, and which does not extend to or affect other states."

As stated this doctrine has been always accepted by the Supreme Court of the United States, and in the late case of *Howard v. Ill.*, 207 U. S. 463, 502, Mr. Justice White, after stating in words which cannot be misunderstood, that the foregoing doctrine had always been accepted, said:

> "It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the

limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters which, from the beginning, have been, and must continue to be, under their control so long as the Constitution endures."

The foregoing expression is as appropriate to the facts in this case as in the one to which it was directly applied.

It is now sought by indirection to nullify the power of the state and a power inherent in every government. This attack is the more dangerous because more insidious and less apparent than if made directly. However, it will be, if successful, none the less effective.

It is altogether beside the question to say that it might or might not be better if all commerce, both state and national, was under federal control. It is doubtless true that two sovereignties operating in the same territory and affecting the same persons and property may at times interfere the one with the other. This results from the nature of our government and the limitation of powers imposed by the Constitution. To be an unlawful interference, however, it must be one that is true and actual and not merely incidental or imaginary.

The Act to Regulate Commerce expressly limits its application to interstate commerce.

The Act to regulate commerce in Oregon expressly limits its application to intrastate commerce.

The laws are carefully worded to the end that each sovereignty will keep within its own sphere and not interfere one with the other, and as the power of regu-

tion over state commerce is vested in each state, it must be exercised by it or it could not be exercised by any authority.

As has been truly stated "the conflict is not between state and federal authority, but between the constitution and laws of both sovereignties and the practices of the railroad companies."

CONSTITUTIONALITY OF THE ACT OF THE LEGISLATIVE ASSEMBLY OF OREGON CREATING THE RAILROAD COMMISSION.

If the railroad commission act violates the constitution of the state of Oregon or the Constitution of the United States, discussion of other assignments of errors and points will be unnecessary. We will therefore next discuss these questions.

CONSTITUTIONALITY OF ACT ASSUMED.

Courts will not for slight reasons, or even in cases of doubt declare a law unconstitutional. It is never assumed the legislative branch of the government enacts unconstitutional measures, nor will a court declare an entire act unconstitutional unless its repugnancy to the constitution is clearly apparent. Even if there is doubt as to the constitutionality of an act all doubt must be resolved in its favor.

Fletcher v. *Peck*, 6 Cranch 87, 128.
United States v. *Coombs*, 12 Pet. 72, 76.
Sinking Fund Cases, 99 U. S. 700, 718.
Nicol v. *Ames*, 173 U. S. 509, 514.
Smithfield v. *Steenekon*, 192 U. S. 470, 492.

In *Interstate, etc., Ry. Co. v. Massachusetts*, 207 U. S. 79, at page 88, Mr. Justice Holmes, speaking for the Court, says:

> "It is not enough that a statute goes to the verge of constitutional power. We must be able to see clearly that it goes beyond that power. In case of real doubt a law must be sustained."

DOES THE ACT VIOLATE SECTION 1, ARTICLE III OF THE CONSTITUTION OF OREGON?

> Article III, Section 1. "The powers of the government shall be divided into three separate departments—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided."

The Supreme Court of Oregon has passed, directly and unequivocally, upon this precise constitutional question, in *State v. Corvallis & Eastern R. Co.*, decided September 19, 1911. This was an appeal from a judgment imposing a penalty for failure to comply with an order of the Railroad Commission of Oregon for the erection of a depot and the installation of an agent. Defendant railroad demurred, on the ground, among others, that the railroad commission act unconstitutionally intermingled the several powers of government. The Supreme Court of Oregon held the act did not contravene the provisions of Act III, Sec. 1, of the Oregon Constitution. This case being just decided has not been reported. If not reported at date of argument, a certified copy of opinion will be filed with clerk of this court.

Such a construction of the state constitution and statute is binding upon this Court.

Jack v. Kansas, 199 U. S. 372, 379.

Smiley v. Kansas, 196 U. S. 447, 454-5.

Merchants' Bank v. Pennsylvania, 167 U. S. 461, 462.

Encyc. of U. S. Sup. Ct. Rep. Vol. 4, p. 1068, note 691, citing numerous cases.

Other cases from the Oregon Supreme Court sustaining orders of the present railroad commission:

Portland Ry. L. & P. Co. v. Railroad Commission, 105 Pac. 709.

Id. v. Id., 105 Pac. 715.

Rehearing in above denied, 109 Pac. 273.

Martin v. Oregon R. & N. Co., 118 Pac. 17.

This question was also considered in the United States Circuit Court for the District of Oregon, in *Southern Pac. Co. v. Campbell*, decided July 3, 1911, and not yet reported in the Federal Reporter.

It is worthy of consideration that Judge Wolverton (who decided the case now at bar) and Judge Bean, who decided *Southern Pacific Co. v. Campbell*, were both members of the Supreme Court of Oregon for many years.

Under a former railroad commission act, the authority of the commission was sustained.

State v. Southern Pacific Co., 23 Ore. 424.

In every state having a constitutional provision similar to that quoted above, where this question has been presented to its Supreme Court, the railroad commission act has been sustained as against the claim that the powers of government were unconstitutionally intermingled.

Florida—

Railroad Commissioners v. Pensacola & A. R. Co., 24 Fla. 417, 472.

Storrs v. Pensacola & A. R. Co., 29 Fla. 617, [illegible]

Georgia—

Georgia R. v. Smith, 70 Ga. 694, 71 Ga. [illegible]

Indiana—

Southern I. Ry. Co. v. Hunt, 42 Ind. App. [illegible]

Southern I. Ry. Co. v. Railroad Commission, [illegible] Ind. 118.

Chicago I. & L. R. Co. v. Railroad Commission, 95 N. E. (Ind. Sup. Ct.) 864.

Kansas—

State v. Missouri P. R. Co., 76 Kans. 467, [illegible]

Michigan—

Michigan C. R. Co. v. Mich. Railroad Commission, 160 Mich. 355, 366, citing, approving as "well considered," and quoting from O. R. & N. Co. v. Campbell, 173 Fed. 957, the case at bar.

Minnesota—

State v. Chicago, M. & St. P. R. Co., 88 Minn. 281.

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State v. Great Northern Ry. Co., 100 Minn. 445, 476.

Mississippi—

Stone v. Yazoo & M. V. R. Co., 62 Miss. 607, 645, *affirmed, Railroad Commission Cases*, 116 U. S. 307.

Nebraska—

In re Railroad Commission, 16 Neb. 670.

New York—

Trustees, etc., v. Saratoga Gas Co., 191 N. Y. 128, 181.

North Carolina—

Atlantic Ex. Co. v. Wilmington R. C., 111 N. C. 468, 472.

Wisconsin—

Minneapolis, St. P. & S. St. M. R. Co. v. Railroad Commission, 136 Wis. 146.

Washington—

State v. Railroad Commission, 52 Wash. 17, 32.
id. v. id., 52 Wash. 33.

Other state cases might be cited, but the foregoing are sufficient to show the universal trend of judicial thought and expression so far as the state courts are concerned.

DECISIONS BY FEDERAL COURTS.

The law as announced by the federal courts is uniform and in harmony with that announced by the state courts.

In *Atlantic Coast Line v. N. C. Commission*, [illegible] U. S. 1, Mr. Chief Justice White said (page 19):

> "The elementary proposition that railroads, from the public nature of the business by them carried on and the interest which the public have in their operation, are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine."

The constitutionality of state statutes creating railroad commissions with power to fix and establish rates has been upheld by the federal courts in numerous cases.

Stone et al. v. Farmers Loan & Trust Co., [illegible] U. S. 307.

Reagan v. Farmers Loan & Trust Co., 154 U. S. 362.

Tilley v. Savannah F. & W. R. Co., 5 Fed. [illegible], 656, 658.

C. & N. W. Ry. Co. v. Dey, 35 Fed. 866, 874.

R. R. Comm. v. Central of Ga. Ry., 170 Fed. 225, 238.

Southern Pacific Co. v. Bartine, 170 Fed. [illegible]

Southern Pac. Co. v. Campbell (U. S. Circ. Ct. Dist. of Oregon, per Bean, J., July 3, 1911).

In *Chicago & N. W. Ry. Co. v. Dey*, *supra*, the proposition was advanced that the law of Iowa was unconstitutional because it seemed to delegate legislative

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power. Mr. Justice Brewer, after stating that the power of fixing rates is purely legislative, speaking for the Court said (page 874):

> "There is no inherent vice in such a delegation of power; nothing in the nature of things which would prevent the state, by constitutional enactment at least, from entrusting these powers to such a board; and nothing in such constitutional action which would invade any rights guaranteed by the federal Constitution. So that, after all, the question is one more of form than of substance. The vital question with both shipper and carrier is that the rates shall be just and reasonable, and not by what body they shall be put in force."

As a third reason he continues:

> "While, in a general sense, following the language of the Supreme Court, it must be conceded that the power to fix rates is legislative, yet the line of demarkation between legislative and administrative functions is not always easily discerned. The one runs into the other. The law books are full of statutes unquestionably valid, in which the Legislature has been content to simply establish rules and principles, leaving execution and details to other officers."

And he concludes as follows:

> "While, of course, the argument from inconvenience cannot be pushed too far, yet it is certainly a matter of inquiry whether, in the increasing complexity of our civilization, our social and business relations, the power of the Legislature to give increased extent to administrative functions must not be recognized."

After an examination of the few authorities then extant bearing upon the subject, among which he cites *Stone v. Trust Co., supra*, he sums up that:

> "All the authorities that have been cited, or that I have been able to find, bearing upon this precise question, are in favor of the constitutionality of such a delegation of power."

SIMILAR DELEGATIONS OF LEGISLATIVE POWER, INVOLVING THE SAME PRINCIPLE, HAVE BEEN SUSTAINED BY THIS COURT REPEATEDLY, UPON THE PRINCIPLE THAT THE POWER CONSISTS MERELY OF THE ASCERTAINMENT OF FACTS UPON WHICH OPERATES THE GENERAL LEGISLATIVE RULE.

Miller v. Mayor of New York, 109 U. S. 385.

Field v. Clark, 143 U. S. 649, 680, 683, 691-2.

Buttfield v. Stranahan, 192 U. S. 470.

Union Bridge Co. v. United States, 204 U. S. 364, 371, *et seq.*

St. Louis I. M. & S. R. Co. v. Taylor, 210 U. S. 281, 287.

Oceanic Steam Nav. Co. v. Stranahan, 214 U. S. 320, 339.

Monongahela Bridge Co. v. United States, 216 U. S. 177, 192.

United States v. Grimaud, 220 U. S. 506.

Hannibal Bridge Co. v. United States, 31 Sup. Ct. Rep. 603, 606 (not yet officially reported).

Under the constitution of the United States the powers of government are separated and defined in effect as they are separated and defined by the state Constitutions. The powers granted under the "Act to Regulate Commerce" as amended and the act creating the Railroad Commission of Oregon are very similar, and in many respects identical as indeed are substantially all the laws dealing with this subject. We know of no case in which this Court has directly passed upon the constitutionality of the "Act to Regulate Commerce" as delegating and intermingling legislative, executive and judicial power. Yet prior to the Hepburn Amendment of 1906, and what is of more consequence, since that amendment giving the Commission power to determine and establish reasonable maximum rates, this Court has repeatedly sustained orders of the Interstate Commerce Commission fixing rates and condemning discrimination.

Interstate Commerce Commission v. *Brimson*, 154 U. S. 447, 474.

Interstate Commerce Commission v. *Cincinnati Etc. R. Co.*, 167 U. S. 479, 494, 508.

Texas & P. R. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 438, 448.

Interstate Com. Comm. v. *Illinois Central R. Co.*, 215 U. S. 452.

Baltimore & O. R. Co. v. *United States*, 215 U. S. 481.

Interstate Commerce Com. v. *C. R. I. & P. Ry. Co.*, 218 U. S. 88.

Interstate Commerce Commission v. C. R. & Q. Ry. Co., 218 U. S. 113.

Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433.

Delaware, L. & W. R. Co. v. Interstate Com. Comm., 220 U. S. 235.

In view of the state of the law too much time may have been devoted to the question under discussion. However, it cannot have escaped the notice of the Court that in substantially every case involving orders of commissions naming rates, the law is attacked as being unconstitutional on the grounds of delegation or admixture of powers. It is therefore hoped that in the case at bar this question is so presented that it may be finally settled by this Court.

PENALTIES.

The bill alleges the penalties imposed by the Act are so severe and the remedies for the protection of a railroad in the event appellant seeks to invoke them are so inadequate, that it cannot invoke the jurisdiction of the Court except at the risk of confiscation of its property; and therefore appellant is denied due protection of the laws and its property subject to be taken from it without due process of law in violation of the Fourteenth Amendment.

It is doubtful if the sections of the Act relating to penalties are properly before the Court in this case or that the question can be presented in the manner attempted for the reasons, *first*, that no penalties are

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sought to be recovered, and *second*, the sections relating to penalties are wholly separable from the remainder of the Act.

United States ex rel. Atty. General v. Del. & Hudson Co., 213 U. S. 366, 417.

Assuming that the question will be considered, the following authorities and propositions are submitted.

From the bill it is difficult to determine whether the penalties prescribed are alleged to be so severe that the entire act is unconstitutional irrespective of the provisions provided by the act for review by the Courts of the action of the Commission, or taken in connection with the sections providing for review by the Courts it still is unconstitutional.

If the allegation of unconstitutionality is based upon the severity of the penalties imposed, it cannot be sustained. All laws of this character necessarily provide penalties more or less severe, of which the legislature in the first instance is the judge.

The penalties provided in the Oregon act for the same offense are generally not so severe as those contained in the Act to Regulate Commerce. Moreover, if the mere fact that a penalty for non-observance of the law, irrespective of any other reason, can be urged as a justification for its violation, it would substantially take from the legislature one of its most important powers and substitute the will of a court for that of the legislature.

Under the Iowa Railroad Commission Act, as amended, a fine of not less than $1,000 nor more than

$5,000 was imposed for a first violation of any of the provisions of the statute, and of not less than $5,000 nor more than $10,000 for a second such offense. This provision of the law was attacked in *Burlington, C. R. & N. R. Co. v. Dey,* 82 *Iowa* 312, 341, upon the ground that the penalties imposed were excessive and forbidden by Section 17, Article 1 of the State Constitution.

In discussing this question the Iowa Supreme Court in 82 Iowa, at page 341 says:

> "It is urged that the fines imposed by the statutes for its violation are excessive, and forbidden by section 17, article 1, of the state constitution. The fines are intended to enforce obedience to the law by corporations having great incomes and controlling vast properties. The legislature, in exercise of its wisdom, fixed penalties which, if imposed upon individuals, might appear excessive, but when imposed upon the corporations would be esteemed no greater than is necessary to enforce obedience to the statute. The railroad companies have a ready and efficient way of avoiding these severe penalties, namely, by obeying truly the laws of the state. If they do this, they are in no danger of the penalties; if they do not, they are in no condition to complain of the laws."

SECTIONS 48-51-52 AND 53 OF THE ACT.

The bill of complaint particularly attacks the penalties provided in Sections 48, 51, 52 and 53 of the Act. It would be well, therefore, to call attention to the acts condemned and for which penalties are provided.

Section 48 (Rec. 140) provides penalties for unjust discrimination and for rebates. The penalty provided

for the offense defined in this section is not less than $100 nor more than $10,000 for each offense, payable to the state by the railroad; any agent or officer offending shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 nor more than $1000 for each such offense.

Under Section 51 (Rec. 141), any person damaged by any act, matter or thing in the act prohibited or declared unlawful, or by omission of any act required to be done, can recover treble the amount of damage sustained with a reasonable attorney's fee to be fixed by the court.

This particular section has been reviewed by the Supreme Court of the state of Oregon in the case of *Martin v. Oregon R. & N. Co.*, 118 Pac. 17 (not yet officially reported) and sustained.

Section 52 (Rec. 141), provides a penalty of not less than $100 nor more than $1,000 for any officer, agent or employee who fails or willfully refuses to fill out blanks, required by the act, or fails or refuses to answer questions therein propounded, or knowingly or willfully gives a false answer to any such question, or evades answering where the fact inquired of is within his knowledge; or who shall upon proper demand fail or willfully refuse to exhibit to the Commission or any person authorized to examine the same, any book, paper or account in his possession or under his control; and a penalty of not less than $500 nor more than $1,000 against the railroad for each such offense when such officer, agent or employee acted in obedience to the direction, instruction or request of such railroad or general officer thereof.

Section 32 (Rec. 142), provides a penalty of not less than $100 nor more than $10,000 for failing, neglecting or refusing to obey any lawful requirement or order made by the Commission, or any judgment or decree made by any court upon its application, by violating any provision of the act or doing any act prohibited for which a penalty has not been provided. It is also provided that the act, omission or failure of any officer, agent or other person, acting for or employed by any railroad, acting within the scope of his employment, shall in every case be deemed to be the act, omission or failure of such railroad.

PENALTIES PROVIDED IN ACT TO REGULATE COMMERCE.

While not controlling, to the extent that the Act to Regulate Commerce, and the penalties thereby imposed are indicative of the judgment of Congress as to the penalties which should be imposed for violation of similar acts and failure to observe similar regulations it is of interest to note that the penalties provided by Congress are far more drastic than those provided by the Act creating the Railroad Commission of Oregon. As illustrative, under the Act to Regulate Commerce the doing of anything prohibited or declared unlawful or of willful omission of a thing required is made a misdemeanor with a fine not to exceed $5,000 for each offense and if an unlawful discrimination, two years imprisonment may be inflicted in addition, Sec. 10, Act to Regulate Commerce. For false billing, classification or weighing, a fine of $5,000 and two years imprisonment is provided. (Sec. 10, Act to Regulate Commerce).

For giving or offering rebates or soliciting or accepting rebate, a fine of $1,000 to $20,000 for each offense with a possible imprisonment of two years is provided. (Section 1, Elkins act). Failure to obey an order is punished by a fine of $5,000 for each offense and each distinct violation is a separate offense. Section 16, Act to Regulate Commerce. Failure to attend and testify or produce books and papers is punished by a fine of $100 to $5,000 with an imprisonment of not more than one year or both. (Immunity of Witness Act).

Section 8 of the Act to Regulate Commerce contains a provision for recovery of damages sustained in consequence of any violation of its provisions together with reasonable counsel or attorney's fees to be fixed by the Court in every case of recovery.

PENALTY PROVISIONS MUST BE CONSIDERED WITH OTHER PROVISIONS.

The various sections of the Act in respect to penalties must be considered with other sections of the same Act connected with the same subject matter.

Sections 22 to 25 (Rev. 154, 155) provide a method of procedure by which any corporation dissatisfied with any order of the Commission may commence a suit to vacate the same, and Section 23 provides for the issuing of an injunction suspending the operation of any such order upon giving bond provided by the Act. If the Court issues an injunction suspending the order of the Commission, it would be impossible for penalties to run against carriers during the pendency of the restraining order. It seems to be plain that the penalties referred to in Section 22 are those accruing to individuals

and not penalties accruing to the state under the suspended order.

This is made unmistakable by the amendment to Section 32 adopted in 1909, set out as an appendix to this brief.

Where one of two constructions can be adopted, the one which will carry out the evident intent of the legislature will be the one sustained by the Court.

A continued violation of almost any law would result in enormous penalties. This is as true of the individual as of the corporation, and it is as logical to urge that, because a large number of violations of the Act might occur followed by prosecutions and for that reason it is void, that the penal code would also be void because a great number of acts are prohibited and penalties provided which might be inflicted upon individual members of the community.

THE RAILROAD COMMISSION ACT PROVIDES ADEQUATE PROTECTION AND REMEDY.

An examination of the Act will show beyond question that the legislature has been careful to provide full protection against any unlawful or unjust action of the Commission.

Under Section 29, any person who shall neglect or refuse to attend and testify, or to produce books, papers, etc., if in his power to do so in obedience to the subpoena or lawful requirements of the Commission, shall be guilty of a misdemeanor and upon conviction by a court of competent jurisdiction, shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment (Rec. 16).

With this exception no violation of the Oregon act or disobedience of an order of the commission is punishable by a jail sentence. Under the law, upon conviction of misdemeanor, imprisonment does not necessarily follow if the fine is not paid, for this is discretionary with the court.

OPINION OF CIRCUIT COURT.

The review by the court below of these provisions of the act and their legal effect is so clear and convincing, we quote from the opinion of the court, 173 Fed. 988-989 (Rec. 72 to 75 inclusive):

> "Let us now proceed to the question whether the penalties imposed by the act are of such a nature as practically to deprive the complainant of the equal protection of the law. A way for ascertaining whether the rates fixed by the railroad commission are reasonable, by judicial determination, is afforded the carrier by the provisions of the act. The complainant complains, however, that to avail itself of such provisions it must either obey the order of the railroad commission pending legislation, or resort to the court for an injunction suspending or staying the order in the meanwhile; but that, if resort be had to the injunction, the act requires the giving of a bond incurring such heavy liabilities in case of failure to sustain the contention that no company could well afford the experiment. The conditions of the bond required are that the company shall answer for all damages caused by the delay in the enforcement of the order of the commission, for all penalties that would attach against the company, and for all compensation for what-

soever sums for transportation services any person or corporation shall be compelled to pay in excess of the sum such persons or corporation would have been compelled to pay if the order of the commission had not been suspended.

"Here are three conditions. The last of the three we must dismiss at once, as being perfectly reasonable and just, for if the order of the commission was reasonable, and so adjudged to be by the court, it should be obeyed from the first. As to the first condition, touching what damages would ensue by reason of delay in enforcing the order, none have been suggested that would be at all burdensome, nor do I now think of any of that character.

"The second condition, at first blush, would seem onerous, and a drastic thing to require of a litigant. But what are the penalties that would attach against the railroad so circumstanced? By the fifty-first section of the act, if any railroad company shall omit to do any act, matter or thing required to be done by it, such railroad is rendered liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation, together with reasonable attorney's fees. These damages may partake of the nature of a penalty. But what damages would ensue to any person, corporation or the state for a refusal to obey an order fixing rates? It might be said that a shipper was damaged by the difference between the rates established by the commission and those charged by the company, but that item is expressly provided for by the third condition, which, by implication, excludes it from the

operation of the second. There may be in some way damage to somebody attending the failure of the railroad company to obey the order of the commission and to adopt certain rates; but, whatever it may be, it cannot be large or oppressive, even if trebled.

"Now, what other penalties are provided? By Section 52 it is declared that if any officer, agent or employe shall fail or refuse to do any of the following things he shall be deemed guilty of an offense and be subject to a fine of from $100 to $1000, and a penalty of from $500 to $1000 is recoverable from the railroad company for each such offense when the officer, agent or employe acts in obedience to its direction. These are the things enumerated: Shall refuse to fill out and return any blanks required by the act, or refuse to answer any questions therein propounded, or shall give false answers to any such questions, or shall, upon proper demand, refuse to exhibit any book, paper, account, etc., in his possession or under his control. It is plain that none of these things are covered by the second condition of the bond. The fifty-third section provides that if the railroad shall violate any provision of the act, or shall fail or refuse to obey any lawful requirement of the commission or judgment or decree of the court, for every such offense such railroad shall forfeit to the state from $100 to $10,000.

"It is probable that the penalties here provided for would not be covered by the bond, because the injunction is provided by law. The company would be availing itself of a lawful right, and while so doing it would seem that it could not at the same time be held for a vio-

lation of Section 58 by a refusal to obey an order of the commission or a judgment or decree of the court. But however this may be, the penalty condition of the bond has been eliminated by an amendment of Section 58, adopted February 28, 1909. See Sess. Laws 1909, p. 168. So that the bond exacted can be no impediment of substantial moment standing in the way of the complainant obtaining a speedy and complete adjudication touching the reasonableness of the rates fixed by the commission.

"But the railroad company is entitled to sue for relief against any unlawful order of the railroad commission in any court, state or federal, having jurisdiction, and it is said the penalties imposed by Section 58 are so enormous as to deter the company from seeking relief in any court but that named in the act, and in the way prescribed. From a reading of the section it will be seen that it is the railroad only that is amenable to the penalty prescribed, not its officers, agents or employes. These functionaries of the railroad are made fixing responsibility upon the railroads, so that in a case like the present the railroad would be chargeable with a violation of the act in failing to obey the order of the railroad commission requiring the revision of local rates within the state—one offense, not a repetition of offenses from day to day, or at intervals, as long as the railroad continued in the refusal to obey the order. It would seem that such is the reasonable construction of the section. Being penal, it should receive a strict construction, and no accumulation of offenses should be

carved out of it, unless they are created by the strict letter of the law.

"Section 52, as I have shown, penalizes special acts only, which are enumerated in the section, none of which are involved by this controversy. Section 51 relates to the recovery of damages in treble the amount of loss suffered, but the railroad company is not penalized, except by the provisions of Sections 52 and 53, and this latter section does not affect its agents and employes.

"Now it is urged that the case of *Ex parte Young*, 209 U. S. 123, is decisive of the particular point here presented. The statutes under consideration in that case, however, were most severe and drastic. For a violation of the act, if by a natural person, a fine of from $2500 to $5000 was imposed for the first offense, and double that for each subsequent offense, and a like fine was imposed if the carrier was a corporation. Another section of the act fixed passenger rates at two cents per mile, and provided that any railroad company, or any officer or representative thereof, violating any of the provisions of the act should be guilty of a felony, and subject to a fine not exceeding $5000, or imprisonment in the state prison not exceeding five years, or both. Another section provided for the regulation of freight traffic, and made any violation of such regulation a misdemeanor, punishable by imprisonment in the county jail. It will be seen at once that there is no comparison between the penalties imposed by the Oregon statute and that of Minnesota, and the difference is so wide as to render the Young case not authoritative here.

"Nor do I think that the penalties imposed are exorbitant or burdensome for willful violations of the provisions of the act. They were designed to secure an enforcement of the law, and I discover no intendment to prevent the railroad companies concerned having ample recourse to any court having jurisdiction for relief."

Considering the purpose for which the penalties are inflicted, the fact that by the express provisions of the statute the penalties must be recovered by a separate action, that the railroad has its defense and its day in court, that appeals to the courts are provided from the orders of the commission, and the statute gives them precedence over all other civil matters, it is difficult to see how the law deprives appellant of due process of law or any defense it may have to protect its property rights.

LEGISLATIVE DUTY TO FIX FINES.

To the legislature belongs the duty of fixing fines and providing for their enforcement.

Southern Express Co. v. Commonwealth, 99 Va. 59.

This case was affirmed, without opinion, in 168 U. S. 705, on the authority of *Chicago & G. T. R. Co. v. Wellman*, 143 U. S. 339.

RULE WHERE PART OF ACT IS CLAIMED TO BE UNCONSTITUTIONAL.

Where part of a statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in sub-

ject matter, depending on each other, operating together for the same purpose, or otherwise so closely connected together in meaning that it cannot be presumed that the legislature would have passed the one without the other—and this though the constitutional and unconstitutional provisions be contained even in the same section, if distinct and separable.

Cooley, Const. Limitations, 7th Ed., p. 246.

Reagan v. Farmers L. & T. Co., 154 U. S. 362, 395-6.

Willcox v. Consolidated Gas Co., 212 U. S. 19, 53, 54.

Fleischner v. Chadwick, 5 Ore. 152, 154.

State v. Wiley, 4 Ore. 184, 187.

C. B. & Q. R. Co. v. Jones, 149 Ill. 361, 387.

State v. Railroad Commission, 52 Wash. 17, 33.

St. Louis & S. F. R. Co. v. Hadley, 168 Fed. 317, 359.

R. R. Comm. v. Central of Ga. Ry. Co., 170 Fed. 225, 239.

The Texas act created a railroad commission with power to make rates reviewable in the courts. The act also contained provisions alleged to be unconstitutional—making the rates conclusive *inter partes,* and imposing excessive penalties. Held (per Brewer, J.),

> "The invalidity of these two provisions may be conceded without impairing the force of the rest of the act. The creation of a commission, with powers to establish rules for the operation of railroads and to regulate rates, was the prime object of the legislation. This

is fully accomplished whether any penalties are imposed for a violation of the rules prescribed, or whether the rates shall be conclusive or simple *prima facie* evidence of what is just and reasonable. The matters of penalty and the effect as evidence of the rates are wholly independent of the rest of the statute."

Reagan v. Farmers Loan & Trust Co., supra, 395.

EX PARTE YOUNG.

It is evident the bill of complaint in this suit was framed to bring it within the decision of *Ex parte Young*, 209 U. S. 123. The court below in its opinion pointed out the radical difference between certain of the facts in the *Young* case and the case at bar. There are other features in the *Young* case than those referred to in the opinion that also distinguish it.

In the opinion in the *Young* case, the Supreme Court laid great stress upon the fact that the rates were established without any prior hearing having been had, and in this connection say (page 148):

> "Now to impose upon a party interested the burden of obtaining a judicial decision of such a question (no prior hearing having ever been given), only upon the condition that, if unsuccessful, he must suffer imprisonment and pay fines, as provided in these acts, is, in effect, to close up all approaches to the courts, and thus prevent any hearing upon the question whether the rates as provided by the acts are not too low and therefore invalid. The distinction is obvious between a case where the

validity of the act depends upon the existence of a fact which can be determined only after investigation of a very complicated and technical character, and the ordinary case of a statute upon a subject requiring no such investigation, and over which the jurisdiction of the legislature is complete in any event." The court says: "We hold, therefore, that the provisions of the acts relating to the enforcement of the rates, either for freight or passengers, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, without regard to the question of the insufficiency of those rates."

The acts attacked were legislative maximum rate acts with drastic penalties, one fixing passenger rates, one commodity rates. An order of the Railroad and Warehouse Commission was also attacked. The acts in question were mandatory and conclusive and did not purport to be a general plan of regulation. No hearing was had, no opportunity to inquire into the reasonableness of the rates given, no appeal provided. We quote from the opinion (page 145):

"For disobedience to the freight act the officers * * * of the company are made guilty of a misdemeanor, and upon conviction each may be punished by imprisonment in the county jail for a period not exceeding ninety days." * * * "Disobedience to the passenger rate act renders the party guilty of a felony and subject to a fine not exceeding $5000 or imprisonment in the state prison for a period not exceeding five years, or both fine and imprisonment."

The sale of each ticket above the price permitted by the act would be a violation thereof. The court also (page 146) calls attention to the fact of the officers, agents or employes of the company having to take "*the risk of imprisonment for years as a common felon.*"

It is now being sought to apply the doctrine of the *Young* case to every act, state or federal, creating a regulative commission, and by construction make it cover cases and acts to which it has no application.

What has been said respecting the various provisions and penalties imposed by the Oregon act, and the method provided for their enforcement need not be repeated.

NO JURISDICTIONAL DEFECT ALLEGED.

Attention of the court is directed to the fact that by the bill of complaint and particularly Exhibit I thereof (Rec. 182), it appears every provision of the law was followed by the railroad commission, and if the law is constitutional there is no jurisdictional defect in any of the proceedings.

A complaint was filed before the commission, issues joined, both parties appeared and participated in the hearing, testimony was taken, and the issues were carefully investigated. The order was duly made and served. If dissatisfied therewith appellant, under the provisions of the act, could have brought suit in the Circuit Court of Oregon for Marion County and could have had the entire question speedily disposed of under the provisions of the law for expediting this class of cases. An appeal to the Supreme Court of the state could also be taken, the hearing of which would also be expedited.

ATTORNEY'S FEES.

Provision of statute allowing attorney's fees in certain cases sustained:

Riverside Mills v. Atl. Coast Line R. Co., 168 Fed. Rep. 990.

Seaboard Air Line R. Co. v. Seegers, 207 U. S. 73.

Martin v. Oregon R. & Nav. Co. (Sup. Ct. Oregon), 118 Pac. 17.

VENUE OF SUITS IN STATE COURTS.

The provision of the act, Sec. 32 (Rec. 347), which confers jurisdiction on the Circuit Court of the state of Oregon for Marion County is not subject to criticism. It in no way deprives appellant of any constitutional rights. Marion County is the county of the state wherein the capitol of the state is situated and all state offices located. The office of the railroad commission is by law required to be maintained in the capitol. It is a very common provision in statutes of this character, and it would seem the state should have the right to fix the venue of suits and actions against its own officers.

Reagan v. Farmers Loan & Trust Co., 154 U. S. 362.

ADEQUATE REMEDY PROVIDED BY ACT.

Considering the provisions of this act, it is a matter of grave doubt under the authority of *Prentis v. Atlantic Coast Line*, 211 U. S. 210, whether appellant should

not have exhausted the remedy provided by the act itself for the determination of the reasonableness of the rates fixed by the order before resorting to the federal courts for relief.

DUE PROCESS OF LAW.

As we have just pointed out, it would seem appellant had but to follow the provisions of the act to have secured relief, and the remedy is plain, adequate and speedy.

It is not to be assumed that state courts are any less careful of the rights of litigants than are federal courts, nor is this assumption the basis of the jurisdiction of federal courts in cases of this character.

It is apparent that appellant's reliance for support of the theory of the lack of due process of law is the case of *Chicago M. & St. P. R. R. Co. v. Minnesota*, 134 U. S. 418, and particularly the following expression in the opinion:

> "It" (referring to the order) "deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

Necessarily this statement was based on the facts before the court, and applied and was intended to apply

to these facts and the law as it had been construed by the Supreme Court of Minnesota.

Taking this extract from this decision and the declaration of the Oregon act, Section 12, that "the charges made for any service rendered or to be rendered * * * shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful," appellant contends that it has the right to a judicial determination of the reasonableness of the rate in the ordinary meaning of the word reasonable considered purely as a traffic matter.

In other words, after the commission has heard and passed on the question as to the reasonableness of a particular rate as a traffic proposition, the same question is to be heard and determined again by a court.

THE MINNESOTA CASE IS NOT AUTHORITY FOR THIS CONTENTION.

In passing upon the Minnesota case this court held it was bound by the construction put upon the state act by the Supreme Court of Minnesota, then set out in the opinion:

> "The Supreme Court authoritatively declares that it is the expressed intention of the legislature of Minnesota, by the statute, that the rates recommended and published by the commission, if it proceeds in the manner pointed out by the act, are not simply advisory, nor merely *prima facie* equal and reasonable, but *final and conclusive* as to what are equal and reasonable charges; that *the law neither contemplates nor allows any issue to be made or inquiry to be had as to their equality or reasonableness in fact*; that, under the

statute, the rates published by the commission are the only ones that are lawful, and therefore in contemplation of law the only ones that are equal and reasonable." (Italics ours).

In the majority opinion the court said:

"No hearing is provided for, no summons or notice to the company before the commission has found what it is to find and declared what it is to declare, no opportunity provided for the company to introduce witnesses before the commission, in fact, nothing which has the semblance of due process of law."

The court, it will be observed, did not undertake to say whether the particular rates in question were or were not reasonable. It simply held under the statute in question due process of law was denied.

There was some general discussion of the subject which may be misleading if superficially read, but when taken in connection with the concurring opinion of Mr. Justice Miller and viewed in the light of later cases decided by the Supreme Court, the meaning of the court cannot be doubted. The proposition as stated by Mr. Justice Miller is that neither the legislature nor the commission acting under this authority can establish arbitrarily, and without regard to justice and right, a tariff of rates which is so unreasonable as to practically destroy the value of property.

In the case of *San Diego Land & Town Co. v. National City*, 174 U. S. 739, 749, the court, reviewing the Minnesota case, said:

"What this court said about the Minnesota statute can have no application to the present

case unless it be made to appear that the constitution and laws of California invest the municipal authorities of that state with power to fix water rates arbitrarily, without investigation, and without permitting the corporations or persons affected thereby to make any showing as to rates to be exacted or to be heard at any time or in any way upon the subject."

The court then quotes with approval the following language from the case of *Spring Valley Water Works* v. *San Francisco*, 82 Cal. 286, 306-7, 309, 315:

> "But the courts cannot, after the board has fully and fairly investigated and acted, by fixing what it believes to be reasonable rates, step in and say its action shall be set aside and nullified because the courts, upon a similar investigation have come to a different conclusion as to the reasonableness of the rates fixed."

Let us see where this contention of counsel would lead us. If the reasonableness of a rate, as a mere traffic proposition, is a judicial question, then the court may, in any case, review the finding of the commission on this question. If the court may determine the reasonableness of a rate in the sense indicated it may declare, and indeed would be driven to say, what is a reasonable rate to be charged in the future, and, therefore, usurp purely legislative and administrative power.

The Minnesota case is authority against appellant, and not in its favor.

PROCEDURE UNDER OREGON ACT.

Under the Oregon act every possible opportunity is given the railroad for a full hearing.

After complaint is filed and before proceeding with the investigation, the railroad complained against must be given ten days notice of the complaint, and then at least ten days notice of the time and place of hearing; all parties are entitled to be heard and have process to enforce the attendance of witnesses.

Other provisions for the purpose of securing a full and complete hearing to all concerned are provided. No lawful order can be made without observing all the jurisdictional requirements (Sec. 28-29) (Rec. 129-132).

The order is not conclusive, but is made *prima facie* lawful, subject to review as provided in Section 32 and Section 38 as amended.

It is not alleged by appellant that it was in any particular denied any of its rights under the law, that the commission did not follow the law, that appellant did not have every opportunity to present any and every fact it desired. On the contrary it affirmatively appears from the bill of complaint that a complaint was filed before the commission and answer made by appellant and issue joined. The cause came on first for hearing November 4, 1907. At this hearing and at all subsequent hearings appellant was represented by counsel and a large amount of testimony taken. The case was investigated carefully and the order not made until April 22, 1908.

Under this state of facts, how can appellant urge it has been denied due process of law or that on the facts as alleged in the bill of complaint and exhibits made a part thereof the *Minnesota* case is authority for such contention? A forceful discussion of this same point

based on the *Minnesota* case will be found in *State ex rel. Oregon R. & Navigation Company v. Railroad Commission of Washington*, 52 Wash. 17, at pages 27, 30-31. The appellant in that case is the appellant in this.

DUE PROCESS OF LAW DOES NOT ALWAYS REQUIRE THE ACTION OF A COURT.

Due process of law merely requires such tribunals as are proper to the subject in hand. Reasonable notice and a fair opportunity to be heard before some tribunal before the issues are decided on are the essentials of due process of law.

In *New York & N. E. R. Co. v. Bristol*, 151 U. S. 556, at page 571, Mr. Chief Justice Fuller, speaking for the court says (italics ours):

> "The conclusions of this court have been repeatedly announced to the effect that though railroad corporations are private corporations as distinguished from those created for municipal and governmental purposes, their uses are public, and they are invested with the right of eminent domain, only to be exercised for public purposes; that therefore they are subject to legislative control in all respects necessary to protect the public against danger, injustice and oppression; *that the state has power to exercise this control through boards of commissioners;* that there is no unjust discrimination and no denial of the equal protection of the laws in regulations applicable to all railroad corporations alike; nor is there necessarily such denial or infringement of the obligation of contracts in the imposition upon them in particular instances of the entire expense of the performance of acts required in

the public interest, in the exercise of legislative discretion; nor are they thereby deprived of property without due process of law, *by statutes under which the result is ascertained in a mode suited to the nature of the case, and not merely arbitrary and capricious;* and that the adjudication of the highest court of a state that, in such particulars, a law enacted in the exercise of the police power of the state is valid, will not be reversed by this court on the ground of an infraction of the constitution of the United States." Citing

Nashville, C. & St. L. Co. v. Alabama, 128 U. S. 96.

Georgia R. & Bkg. Co. v. Smith, 128 U. S. 174.

Minneapolis & St. L. R. Co. v. Beckwith, 129 U. S. 26.

Dent v. West Virginia, 129 U. S. 114.

Charlotte, C. & A. R. Co. v. Gibbes, 142 U. S. 386.

Minneapolis & St. L. R. Co. v. Emmons, 149 U. S. 364.

The following cases also discuss and define what constitutes due process of law:

Kennard v. Louisiana ex rel. Morgan, 92 U. S. 480, 482.

Davidson v. New Orleans, 96 U. S. 97, 102.

Brown v. New Jersey, 175 U. S. 172, 176.

Public Clearing House v. Coyne, 194 U. S. 497, 508.

The right of appeal is not an essential element in due process of law.

Raetz v. Michigan, 188 U. S. 505, 508.

PRESCRIBING RATES FOR THE FUTURE A LEGISLATIVE FUNCTION.

The reasonableness of rates prescribed by governmental authority to be charged in the future is not a judicial question. It is a legislative question. In no case has a court passed on the mere reasonableness of a rate as a traffic proposition. Courts interfere only where commissions act beyond the scope of their authority or have abused their discretion. Neither legislature or commission can confiscate property under the guise of regulation, and in such cases courts can set aside a law or an order.

In the case of *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362 at page 397, it was said:

> "Courts * * * do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work, but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable, and such as to work a practical destruction to rights of property, and if found so to be, to restrain its operation."

The rule declared by the Supreme Court in an unanimous decision, in the case of *San Diego Land &*

Town Co. v. National City, 174 U. S. 739, at page 754, is as follows:

> "The judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public; that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use."

This expression of the Supreme Court has been repeatedly affirmed, notably in the recent cases of *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, and *Willcox v. Gas Co.*, 212 U. S. 19.

The allegations in the bill of complaint signally fail to meet this requirement.

That rate making is a legislative function is true whether it be exercised directly by the legislature itself or by some subordinate or administrative body to whom the power of fixing rates in detail has been delegated. The completed act derives its authority from the legislature and must be regarded as an exercise of the legislative power.

Noyes, Am. R. R. Rates, pp. 203, 207.

Munn v. Illinois (Granger Cases), 94 U. S. 113, 133.

Prentis v. Southern R. Co., 211 U. S. 210.

Honolulu R. T. & L. Co. v. Hawaii, 211 U. S. 282.

Knoxville v. Knoxville Water Co., 212 U. S. 1.

Mr. Justice Brewer, in delivering the opinion of the court in the case of *Interstate Commerce Commission v. Cincinnati etc. Railroad Co.*, 167 U. S. 479, 499, says:

> "It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act."

In *McChord v. Louisville & Nashville R. Co.*, 183 U. S. 483, 495, Chief Justice Fuller, speaking for the court, says:

> "The fixing of rates is essentially legislative in its character."

Mr. Justice Moody in *Home T. & T. Co. v. Los Angeles*, 211 U. S. 265, 278, says:

> "Rate regulation is purely a legislative function."

In *Honolulu R. T. Co. v. Hawaii*, 211 U. S. 282, 290-291, it is held that the power to regulate the operation of railroads includes regulation of the time of the running of cars, that such power is legislative in character, and the legislature itself may exercise it or may delegate its execution in detail to an administrative body.

In *Prentis v. Atlantic Coast Line*, 211 U. S. 210, 226, the court held:

"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter."

THE ACTION OF THE COMMISSION HAS THE EFFECT OF LAW.

It appearing that the making of a rate for the future is legislative in its character, and that the legislature may confer upon a commission, an administrative body, power to fix rates for the future, it becomes pertinent to inquire as to the effect of an order of the commission fixing a rate.

Whether the legislature acts directly, naming the specific rates, or whether it adopts general rules and delegates power to apply them to specific facts and exercise discretion in respect thereto, the result is the same; the ultimate act is legislative. The completed act derives its authority from the legislature and must be regarded as an exercise of the legislative power.

Knoxville v. Knoxville Water Co., 212 U. S. 1.

Prentis v. Southern R. Co., 211 U. S. 210.

Honolulu Rapid Transit & Land Co. v. Hawaii, 211 U. S. 282.

Atlantic Coast Line Ry. Co. v. North Carolina, 206 U. S. 1.

Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426.

Texas & Pac. Ry. Co. v. Mugg, 202 U. S. 242.

Texas & Pac. Ry. Co. v. Cisco Oil Co., 204 U. S. 449.

Judge Walter C. Noyes, in his excellent work on American railroad rates, states the proposition, page 250, as follows:

> "It seems impossible to draw a constitutional statute conferring upon a court power to review upon the facts the action of the Interstate Commerce Commission in making a rate. The courts could not make a rate, for rate making is not, and cannot be, a judicial function. They cannot supervise the action of the commission for precisely the same reason. There is no difference in principle between making a rate and reviewing upon its merits the action of a commission in making a rate. In both cases the exercise of legislative, not judicial, discretion is required. A statute requiring the courts to participate directly or indirectly in making rates for the future would impose non-judicial functions and would be unconstitutional. To repeat what we have already pointed out, it cannot be too clearly borne in mind that while the courts can determine the reasonableness of the carriers' charges they cannot, in the same way and from the same point of view, determine the reasonableness of commission-made rates. When a rate is made by a commission, under a law, it has the effect of a law which the courts can only review upon constitutional grounds. The distinction is between the reasonableness of a charge and the reasonableness of the law.
>
> "But it may be said that the courts always have examined rates made by commissions to

determine whether they are reasonable, and decisions of the Supreme Court of the United States may be pointed out where the enforcement of commission-made tariffs has been enjoined because the rates were unreasonable. But, as we have already seen, the word 'unreasonable' in the sense of these decisions means confiscatory. The only ground upon which the court could interfere with rates made by the Interstate Commerce Commission would be that they violated an amendment of the constitution—that they deprived the railroad of its property without just compensation or due process of law—and they could only have that effect when they were confiscatory."

POWER OF THE LEGISLATURE.

Legislative bodies have absolute and uncontrolled powers of legislation, except, *first*, as it may have been limited by the constitution of the United States; and, *second*, as it may have been limited by the constitution of the state. A legislative act cannot, therefore, be declared void unless its conflict with one of these two instruments can be pointed out. *Cooley, Constitutional Lim.* (7th Ed. 241).

> "Whether a statute is constitutional or not is always a question of power. * * * The court must assume that legislative discretion has been properly exercised: If evidence was required, it must be supposed it was before the legislature when the act was passed."

The courts have no right to inquire into the motive of a legislature. *Cooley, Constitutional Lim.* (7th Ed. 257).

"The judiciary can only arrest the execution of a statute when it conflicts with the constitution. It cannot run a race of opinions upon points of right, reason and expediency with the law-making power." *Cooley, Constitutional Lim.* (7th Ed. 236).

The courts "have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the constitutional power of the law-making body." *St. Louis & I. M. R. Co. v. Taylor*, 210 U. S. 281, 295.

There is no such thing as a court exercising any power or control over the legislature. If an act is unconstitutional it will so declare; beyond this it cannot go. The legislature, except as limited by the constitution, exercises the sovereign powers, and its will is the sovereign will.

The Supreme Court of the United States in the case of *Interstate Commerce Commission v. Illinois C. R. Co.*, 215 U. S. 452, 470, says:

"Power to make the order, and not the mere expediency or wisdom of having made it, is the question."

PRESUMPTION ORDER IS LAWFUL.

Certain presumptions attend the constitutionality of statutes. A rate made under legislative authority is the law, and the same presumptions attach to it.

"Every statute is presumed to be constitutional. The courts ought not to declare one to be unconstitutional unless it is clearly so. If there is doubt the expressed will of the legislature should be sustained."

Waite, Chief Justice, in *Munn v. Illinois*, 94 U. S. 113, 123.

Mr. Justice Field in the case of *Ruggles v. Illinois*, 108 U. S. 526, 541, says that the legislative rate is to be taken as presumptively reasonable.

Harlan, J., said in *Sweet v. Rechel*, 159 U. S. 380, 392:

> "In determining whether the legislature, in a particular enactment, has passed the limits of its constitutional authority, every reasonable presumption must be indulged in favor of the validity of such enactment. It must be regarded as valid unless it can be clearly shown to be in conflict with the constitution. It is a well settled rule of constitutional exposition that if a statute may or may not be according to circumstances, within the limits of legislative authority the existence of the circumstances necessary to support it must be presumed."

Mr. Justice Brewer said in *Chicago etc. R. Co. v. Wellman*, 143 U. S. 339, 344:

> "The theory upon which, apparently, this suit was brought is that parties have an appeal from the legislature to the courts, and that the latter are given an immediate and general supervision of the constitutionality of the acts of the former. Such is not true. Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any act of any legislature, state or federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its

> solemn duties, determine whether the act be constitutional or not, but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals."

In the same case he speaks of "how easily courts may be misled into doing grievous wrong to the public, and how careful they should be not to declare legislative acts unconstitutional."

The same admonition was expressed in *San Diego etc. Co. v. National City*, 174 U. S. 739, 754, Mr. Justice Harlan saying:

> "But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public; that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use."

Mr. Justice Brewer repeats this doctrine in *Chicago etc. R. Co. v. Tompkins*, 176 U. S. 167, 173, in this language:

"In approaching the consideration of a case of this kind we start with the presumption that the act of the legislature is valid, and upon any company seeking to challenge its validity rests the burden of proving that it infringes the constitutional guaranty of protection to property. The case must be a clear one in behalf of the railroad company or the legislation of the state must be upheld.

"Such being unquestionably the law, it is obviously of the utmost importance that the facts shall be clearly and accurately found and distinctly stated by the trial court, and that those facts shall sustain the conclusion reached."

The Supreme Court of the United States has found it necessary, apparently, to repeat these doctrines over and over again. Justice Shiras, in the case of *Louisville etc. R. Co. v. Kentucky*, 183 U. S. 503, 511, finds occasion to express it in this language:

"For the federal courts to interfere with the legislative department of the state government when acting within the scope of its admitted powers is always the exercise of a delicate power—one that should not be resorted to unless the reason for doing so is clear and unmistakable."

In the very recent case of *Knoxville v. Knoxville Water Company*, 212 U. S. 1, 8, Mr. Justice Moody, referring to a city ordinance fixing water rates in Knoxville, says:

"There can be at this day no doubt, on the one hand, that the courts, on constitutional grounds, may exercise the power of refusing to enforce legislation, nor, on the other hand,

> that the power ought to be exercised only in the clearest cases. The constitutional invalidity should be manifest, and where that invalidity rests upon disputed questions of fact, the invalidating facts must be proven to the satisfaction of the court."

In the case of *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, the court emphasizes the idea, apparent to all who are familiar with the character of the evidence usually introduced in rate cases, that until rates are fairly tried it is well-nigh impossible to determine the effect of reduced rates upon the revenues of the company. Such evidence consists mostly of statistics relating to past experiences under the old rates, and of opinions and speculations as to the probable effect of the proposed new rates. Justice Peckham, in that case, says (page 41):

> "The case must be a clear one before the courts ought to be asked to interfere with state legislation upon the subject of rates, especially before there has been any actual experience of the practical result of such rates."

COMMISSIONS ARE NECESSARY.

Such commissions are necessary. It is practically the only method by which a legislature or Congress may effectively exercise the rate-making power.

Noyes, Amer. R. R. Rates, p. 206.

Redfield, Railways, 6th Ed., Vol. 2, p. 606.

R. R. Comm. v. Ga. Ry. Co., 170 Fed. 225.

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THERE IS NO LEGAL STANDARD BY WHICH THE REASONABLENESS OF A RATE CAN BE TESTED, AND HENCE NO RATE CAN BE SAID, AS A MATTER OF LAW, TO BE REASONABLE IN AND OF ITSELF.

The question is one of fact depending on many considerations.

Ill. Cent. R. Co. v. Int. Com. Comm., 206 U. S. 441.

Tex. & Pac. R. Co. v. Int. Com. Comm., 162 U. S. 197.

C. N. O. & T. P. R. Co. v. Int. Com. Comm., 162 U. S. 184.

THE COMMISSION IS AN EXPERT BODY.

The commission is an expert body. It has provided for it by law means and sources of information for the purpose of being informed on the subjects of complaints brought before it. The performance of the duties imposed upon the commission by law make them experts. This fact is recognized by the courts.

Such a tribunal, by reason of the experience of its members in this kind of controversy and their great opportunity for full information, is in a sense an expert tribunal.

Smyth v. Ames, 169 U. S. 466, 527.

East Tenn. V. & R. Co. v. I. C. C., 99 Fed. 62, 64.

Steenerson v. Great Northern R. Co., 69 Minn. 353, 377.

Minn. St. P. & S. Ste. M. R. Co. v. R. R. Comm., 136 Wis. 146.

Besides this the work of the commission requires much expert knowledge of the difficult subject of transportation and rates, the construction of economic as well as legal principles and an intimacy with local and state traffic conditions. Consequently unless required to do so by the mandate of the law, the courts should interfere as little as they may with the determination and work of the commission. *Minn. St. P. & S. Ste. Marie Ry. Co. v. R. R. Comm. of Wis.*, 136 Wis. 146.

COMPARISON OF POWERS GRANTED UNDER THE OREGON ACT AND ACT TO REGULATE COMMERCE RESPECTING AUTHORITY TO FIX JUST AND REASONABLE RATES.

Section 12 of the Oregon act (page 26 *ante*) provides *inter alia* "the charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

Section 1 of the act to regulate commerce as amended provides:

> "All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Under Section 28 of the Oregon act (page 29 *ante*) the commission is empowered on complaint or on its motion to investigate rates, fares, charges and classifications.

> "If upon such investigation the rate or rates, fares, charges or classifications or any joint rate or rates or any regulation, practice or service complained of shall be found to be unreasonable or unjustly discriminatory, or the service shall be found to be inadequate, the commission shall have power to fix and order substituted therefor such rate or rates, fares, charges or classifications as it shall have determined to be just and reasonable and which shall be charged, imposed and followed in the future," etc.

Section 13 of the Act to Regulate Commerce as amended provides for complaints, hearings and investigations. Section 14 provides for report and findings thereon. Section 16 provides that after full hearing under Section 13 of the act if

> "The commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged or collected by any common carirer or carriers subject to the provisions of this act for the transportation of persons or property * * * are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial * * * the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges to be thereafter observed in such case as the maximum to be charged," etc.

Further comparison will show that in substance the Act of the Oregon legislature, and the Congressional Act to Regulate Commerce are alike.

Both Congress and the legislature have thus fixed the standard beyond which a rate shall not go and be lawful. The power of the Commission in both instances is limited by providing the measure or standard it shall use. Within this limit an order of the Commission is in effect a law.

CONSTRUCTION BY THE SUPREME COURT OF THE ACT TO REGULATE COMMERCE AND THE POWERS OF THE COMMISSION.

Fortunately in this connection we do not have to indulge in speculation or analysis. The Supreme Court has settled this question finally. Under the statute the only inquiry open to the Courts is as to whether the order was regularly made and duly served and whether any constitutional rights have been violated. In other words are the rates fixed confiscatory? Has the Commission under the guise of regulation acted so arbitrarily as to abuse its discretion or otherwise acted beyond the scope of its authority? "Power to make the order and not the mere expediency of having made it, is the question." Indeed in passing upon the reasonableness and justice of a rate it may be said the conclusions of fact by the Commission are conclusive.

Illinois Central R. R. Co. v. I. C. C., 215 U. S. 452.

Baltimore & O. R. R. v. United States, 215 U. S. 481.

Southern Pacific Co. v. I. C. C., 219 U. S. 433.

In *Interstate Com. Comm. v. Chicago, etc., R. Co.*, 218 U. S. 88, 110, the court said:

> "One question remains for discussion,—the finding of the Commission upon the character of the rate, whether it is unreasonable as decided. Such decision, we have said with tiresome repetition, is peculiarly the province of the Commission to make, and that its findings are fortified by presumptions of truth, due to the judgments of a tribunal appointed by law and informed by experience." (Citing *Illinois C. R. Co. v. Interstate Com. Comm.*, 206 U. S. 454 and cases cited.)

In the same case the Court also said (page 110):

> "We have also said that the primary jurisdiction is with the Commission, the power of the courts being that of review, and is confined in that review to questions of constitutional power and all pertinent questions as to whether the action of the Commission is within the scope of the delegated authority under which it purports to have been made." (Citing *Interstate Com. Comm. v. Illinois C. R. Co., supra.*)

In *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, the Court said:

> "The courts, in clear cases, ought not to hesitate to arrest the operation of a confiscatory law, but they ought to refrain from interfering in cases of any other kind."

This principle was reiterated in *Willcox v. Consolidated Gas Co., supra.*

In *President, Managers, etc., of Monogahela Bridge Co. v. United States,* 216 U. S. 177, the bridge company had been convicted for failing to make alterations in a bridge over an interstate waterway, which the Secretary of War required. The Secretary was authorized, by general act of Congress, to prescribe reasonable regulations for the conduct of navigation on the navigable streams of the United States, after due notice and hearing. The parallel between that delegation of power and the delegation of power to make reasonable rules for the conduct of transportation upon rails is obvious.

The court held the delegation of power to be valid and not open to the charge of violation of the constitution; that legislative and judicial powers were not intermingled with executive functions; that the power of the Secretary was not an arbitrary one, as he had to give due notice and opportunity to be heard and a reasonable time to comply with the orders made; that the requirements made did not amount to a taking of property for public use without due compensation; and that there had been a hearing before the Secretary. The court said (page 195):

> "It does not appear that the Secretary disregarded the facts or that he acted in an arbitrary manner, or that he pursued any method not contemplated by Congress. It was not for the jury to weigh the evidence and determine, according to *their* judgment, as to what the necessities of navigation required, or whether the bridge was an unreasonable obstruction. The jury might have differed from the Secre-

tary. That was immaterial; for Congress intended by its legislation to give the same force and effect to the decision of the Secretary of War that would have been accorded to direct action by it on the subject. It is for Congress, under the Constitution, to regulate the right of navigation by all appropriate means, to declare what is necessary to be done in order to free navigation from obstruction, and to prescribe the way in which the question of obstruction shall be determined. Its action in the premises cannot be revised or ignored by the courts or by juries, except that when it provides for an investigation of the facts, upon notice and after hearing, before final action is taken, the courts can see to it that executive officers conform their action to the mode prescribed by Congress."

The Supreme Court has on occasions reversed the Interstate Commerce Commission's decisions—more particularly before the amendments of June 29, 1906, than since—but it has repeatedly explained that the actions of the Commission can be impeached only for errors of law, and that the court has never interfered with a determination of the Commission upon questions of fact, or mixed fact and law. The determination of a reasonable rate is peculiarly a question of fact.

Illinois Central R. Co. v. Interstate Commerce Comm., 206 U. S. 441, 454.

Cincinnati, H. & D. R. Co. v. I. C. C., 206 U. S. 142, 154.

Cincinnati, N. O. & T. P. R. Co. v. I. C. C., 162 U. S. 184.

Louisville & N. R. Co. v. Behlmer, 175 U. S. 648.

In view of this unbroken line of authorities, many of them passing upon an Act of Congress substantially the same as the Oregon act, it may well be asked what principle requires a different construction in the one case than the other. The only distinction is that one commission passes upon interstate rates under a congressional grant of power, and the other commission passes upon intrastate rates under powers granted by the state legislature. Should one rule be adopted in the one case and not in the other it would lead to confusion worse confounded.

THE STATE COURTS UNDER SIMILAR STATUTES CONSTRUE THE POWERS OF THE COMMISSION AND OF THE COURTS SUBSTANTIALLY AS HAS THE SUPREME COURT OF THE UNITED STATES.

In *Steenerson v. Great Northern Ry. Co.*, 69 Minn. 353, 375, 376, the court in discussing this question said:

> "If by this the legislature intended to provide that the court should put itself in the place of the commission, try the matter *de novo*, and determine what are reasonable rates, without regard to the findings of the commission, such intent cannot be carried out, as a statute which so provided would be unconstitutional. The fixing of rates is a legislative or administrative act, not a judicial one (*State v. Chicago*, 38 Minn. 281, 298.) And the performance of such duties cannot, under our constitution, be imposed on the judiciary. (*Foreman v. Board*, 64 Minn. 371; *State v. Young*, 29 Minn. 474; *Reagan v. Farmers, etc., Co.*, 154 U. S. 362.)
> * * *

"The district court can review the findings of the commission only so far as to determine whether or not the rates fixed are so unreasonable as to be confiscatory, just as an appellate court reviews the verdict of a jury for the purpose of determining whether it is so excessive that it cannot stand. * * *

"Of course, in determining whether the rates fixed are confiscatory, the court must incidentally consider what are reasonable rates, but it must also resolve every reasonable doubt on that question in favor of the findings of the commission."

See also:

Minneapolis St. P. & S. Ste. M. R. Co. v. R. R. Comm., 136 Wis. 146.

Chicago, Rock Island & P. R. Co. v. Railway Commission, 85 Neb. 818, 824-5.

Spring Valley Water Works v. San Francisco, 82 Cal. 286, 306.

Jacobson v. Wisconsin Ry. Co., 71 Minn. 513, 529, affirmed in 179 U. S. 287.

Morgan's etc., R. Co. v. R. R. Comm. of Louisiana, 109 La. 247, 265.

In re Amsterdam, 33 N. Y. Supp., 1009.

People v. Board of R. R. Comm., 53 App. Div. (N. Y.) 61.

Pensacola, etc., R. Co. v. State, 25 Fla. 310.

Storrs v. Pensacola Ry. Co., 29 Fla. 617.

State ex rel. R. R. Comm. v. Seaboard Air Line R. Co., 48 Fla. 129.

Doubtless cases may be found where apparently the decision involved a consideration of the "reasonableness" of the rate fixed pursuant to legislative authority. But, as is indicated by the foregoing cases, the word must be taken as meaning "constitutional and such as reasonable men might have found," or else the decisions must fall. This is clearly pointed out by Judge Noyes' work on "American Railroad Rates," p. 212, note.

COURTS WILL PROTECT CONSTITUTIONAL RIGHTS—THEY DO NOT PERFORM ADMINISTRATIVE FUNCTIONS.

Any construction which would permit the courts to review, *de novo,* the facts except within the limitations outlined, would overwhelm the judiciary with administrative work, which it is not the business of courts to perform. The courts would be at the beck and call, not alone of every carrier which desired the reasonableness of a rate reviewed, but also of every one who was dissatisfied with the administrative determination of any other functionary, and these administrative bodies would be an unnecessary expense. Courts are the proper final arbiters as to the protection of constitutional rights and the final interpretation of statutes, but the legislative, the executive, and the administrative departments, within the limits of their constitutional powers, may be safely trusted to exercise a reasoning discretion and perform their functions intelligently, fairly, and with a view to the common good.

> "The notion that Commissions of this kind should be closely restricted by the courts and that justice in our day can be had only in courts

is not conducive to the best results. Justice dwells with us as with the fathers, it is not exclusively the attribute of any office or class, it responds more readily to confidence than to criticism, and there is no reason why the members of the great Railroad Commission of this state should not develop and establish a system of rules and precedents as wise and beneficent within their sphere of action as those established by the early common law judges. We find the statute well framed to bring this about."

Minneapolis, St. P., etc., R. Co. v. R. R. Com. of Wisconsin, 136 Wis. 146, 169.

RULES OF PLEADING APPLIED TO ALLEGATIONS OF BILL.

Having in mind the function and powers of the commission and the order made, and the fact this case stands on the bill and the demurrers thereto, we cite authorities construing effect of allegations and what allegations must be found in a bill of this character.

Complaint must contain full, accurate, clear, certain and positive statement of ultimate facts.

Bates Fed. Eq. Pro. Vol. 1, Sec. 127.

In construing an ambiguous clause the court is bound to adopt that interpretation which is least favorable to plaintiff.

Foster's Fed. Prac., Sec. 106.

A demurrer only admits facts well pleaded; it does not admit matters of inference and argument; it does not admit the accuracy of an alleged construction of an instrument when the instrument itself is before the court, nor the construction of the ascription of a purpose to the parties when not justified by the language used. The averments of the plaintiff as to his understanding of his rights and of the liabilities and duties of others can exert no influence upon the mind of the court in the disposition of the demurrer.

Foster Fed. Prac. Section 106.

Dillon v. Barnard, 21 Wall. 430, 437, 438.

U. S. v. Ames, 99 U. S. 35, 45.

Interstate L. Co. v. Maxwell L. Co., 139 U. S. 569.

Demurrer does not admit facts repugnant to each other or any fact of which the court will take judicial knowledge.

Bates Fed. Eq. Pro. Sec. 209.

A demurrer does not admit conclusions of law.

Foster Fed. Prac. Sec. 106.

Bates, Fed. Eq. Pro., Sec. 209.

Such for example are allegations that a tax is "unreasonable and excessive" without the stating of any valid reasons for it.

Packet Co. v. Catlettsburg, 105 U. S. 559.

A demurrer does not admit a false allegation concerning a fact of which the court will take judicial knowledge. Demurrer does not admit a construction of a statute, nor that a statute confers rights or imposes obligations pleaded.

Bates, Fed. Eq. Pro. Sec. 207.

Facts ill-pleaded, mere conclusions of law, and immaterial matters, are not for any purpose admitted by the demurrer, nor are allegations which are contradicted by annexed exhibits nor matters judicially noticed.

Bryant, Code Pleading, p. 223.

Boone, Code Pleading, (1st Ed.) 118.

Bliss, Code Pleading, 2nd E. 418.

Attorney General v. Foote, 11 Wis. 14.

The court will not hold facts as admitted true by a demurrer which are contradicted by legislative acts which they are bound to notice judicially.

Griffin v. Augusta & K. R. R. Co., 72 Ga.

When a pleading mistates the effect and purport of a statute upon which the party relies, a demurrer to it does not admit the construction of the statute, or that the statute imposes the obligations or confers the rights which the party alleges.

Pennie v. Reis, 132 U. S. 464, 470.

Woodruff v. New York & C. R. Co., 30 Conn. 63, 90.

Norman v. Kentucky Board of Managers, 98 Ky. 537, 547.

Alexander v. School District, 62 Vt. 278, 277.

Woodstock v. Hancock, 62 Vt. 348, 351.

McPhail v. People, 160 Ill. 77.

An allegation that rate is unreasonable and if enforced will result in large loss of revenue is not admitted by demurrer.

Reagan v. Farmers' L. & T. Co., 154 U. S. 362, 401.

Central of Ga. Ry. Co. v. McLendon, 157 Fed. 961, 977.

B. C. R. & N. Ry. Co. v. Dey, 82 Iowa 312, 343.

Missouri Pac. R. Co. v. Smith, 60 Ark. 221.

ALLEGATIONS IN THE BILL OF COMPLAINT AS TO THE CHARACTER AND EFFECT OF THE RATES FIXED BY THE ORDER AS TO THEIR BEING UNREASONABLE.

The bill of complaint must be treated as an entirety. The order of the commission, the law, the tariffs are all made part of the bill.

By the order it appears after due hearing and investigation certain existing rates were condemned as unjust and unreasonable and the rates named in the order, fixed and determined to be just and reasonable. Moreover it appears that the entire schedule of rates were not under investigation or affected, but commodities moving under class rates only between Portland and points east of The Dalles and Huntington.

Under the allegations of the complaint as to the percentage all their local traffic in the state of Oregon bears to their total traffic the effect of the reduction in revenue which was about 14 per cent, as appears from the order, could not be very serious.

In view of the fact that doubtful or obscure pleading is not favored and that all the facts respecting the probable effect of the rates were within the knowledge of appellant, it must follow that as confiscation was not alleged it could not be and the only question presented or attempted to be presented was the mere reasonableness of the rates as a traffic proposition. This fact the commission was required to and did pass on. There is no allegation or claim that any unjust discrimination will result. The nearest approach to this is the allegation respecting the possible effect the order may have in the trading territory between two cities.

THE ALLEGATION.

There are statements in various paragraphs in the bill alleging the rates in force are "reasonable rates." In paragraph XX (Rec. 14) it is alleged:

> "The rates attempted to be established by the said order, Exhibit I, are lower than the rates fixed and established by said Tariff No. L-525 and are 'unreasonably low and unjust' to your orator. While the immediate effect of such order, Exhibit I, if it should be confined strictly to the state of Oregon, might leave your orator a fair income upon its entire business, nevertheless if the rates attempted to be established by the said order, Exhibit I,

be applied to the interstate business directly affected thereby and if the percentage or reduction effected by such order be applied to the local business of your orator in the states of Oregon, Washington and Idaho, which local business is now being transacted upon rates higher than those fixed by Tariff L-525, it would operate to confiscate the property of your orator and deprive it of property without due process of law, in violation of the constitution of the United States, because such reductions would leave your orator without any fair net earnings upon its property."

In paragraph XXV (Rec. 19) is an allegation that the effect of the order will be to make

"the rates east of The Dalles unreasonably low and unjust to your orator and has the effect of making the rates to some of the points and places east of The Dalles less than the rate to The Dalles. * * * The application of the present rates between Portland and The Dalles to points beyond The Dalles, causes such rates to points beyond The Dalles to be unreasonably low and unjust to your orator."

It is also alleged in the same paragraph that rates upon branch lines shall be the same for equal distances as are undertaken to be fixed and established upon the main line; that the cost of the service is much greater upon branch lines than upon the main line and the traffic less and the service rendered the public reasonably worth more upon such branch lines than the service rendered for corresponding distances upon the main line and that the rate so undertaken to be fixed and established upon such branch lines by said order Exhibit I, are unreasonably low and are unjust to your orator."

It is alleged that between Portland and La Grande and Portland and Baker City, the distance being respectively 305 miles and 356 miles, the order allowed but a slight difference in some classes and none in others, in the rate between Portland and these two places, and in this connection the complaint alleges:

> "It is a fact and your orator so charges that such attempted adjustment of rates is arbitrary and unreasonable and is founded upon no circumstance and condition affecting the cost of service to your orator, or the value of the service to the public and is unjust to your orator * * * and avers * * * that the entire basis of rates and the rates so undertaken to be fixed and established by said railroad commission in and by said order, Exhibit I, are arbitrary and are unreasonably low and unjust to your orator and because thereof said order should be set aside for the reason that the said commission has no power to attempt to establish arbitrary, unjust and unreasonable rates upon the lines of your orator of said railroad and the branches thereof owned or operated by your orator."

We have endeavored to set out all the allegations of the bill as to the character of the rates fixed by the order in question, in order that the Court might have before it in succinct form the allegations respecting this phase of the case and to which the demurrer was directed. It is not uncommon in complaints of this character to indulge in loose generalization and conclusions of the pleader and to refer to orders of commissions or acts of the legislature as being "unreasonable and unjust," "arbitrary," "capricious," "confiscatory *pro tanto*" and

the like, and adjectives are used rather indiscriminately in seeking to characterize the order and action of a Commission in reducing rates or condemning an unjust discrimination. The bill of complaint in this cause is no exception to the rule. Such allegations, however, are not allegations of fact—and facts must be stated to enable a complainant to relief.

FACTS NOT PLEADED.

It will be observed the complaint states no ultimate facts, and the omissions of statement of fact are of peculiar pertinency. There is no allegation as to the value of the property devoted to the public use, the capitalization, the receipts or disbursements, the dividends paid or not paid, the net earnings, the probable loss under the order, the amount of traffic affected by the order, the amounts received from state and interstate business, the relative freight and passenger earnings—absolutely not one of the many salient facts, which under all the rules of pleading must be alleged to place a court in a position to act intelligently or an adversary to frame an issue. No allegation, even in general terms, squints at confiscation or even that the order as made will seriously impair the revenue.

Indeed a reduction in rates does not necessarily decrease earnings.

Willcox v. Cons. Gas Co., 212 U. S. 19, 51.

Knoxville v. Knoxville Water Co., 212 U. S. 1, 18.

Chic. & G. T. R. Co. v. Wellman, 143 U. S. 339.

The absence of the necessary allegations of fact and the evident theory on which the bill was framed was referred to in the opinion of the Court below as follows (Rec. 75):

> "This brings us to the ultimate question whether, under the allegations of the bill, it appears that the rates imposed by the Railroad Commission are unreasonable and unjust to the complainant company. There is a statement in paragraph 20 of the bill which is very significant." (The court then quotes the allegation of paragraph XX as set out at page 12 *ante*).
>
> "This signalizes the particular theory upon which this suit is instituted. But the order has or can have no effect beyond the limits of the state of Oregon. It was not so designed, nor is such its operative force, except as it may affect interstate commerce incidentally merely. It is no purpose of the railroad commission act, nor of the order of the commission, that the rate fixed by the commission should be applied to interstate business, or any part or parcel thereof, nor the business of complainant in Washington or Idaho, or elsewhere than in Oregon. That it may operate to affect incidentally interstate rates established, or the rates on complainant's lines in Washington and Idaho, is, as I have endeavored to show heretofore, not to the purpose. The question is: Are the rates established by the commission in Oregon, and for Oregon, and not beyond its confines, reasonable? That they are, is practically admitted by the averment quoted, that the effect of the order, if confined to the state, might leave a fair income upon complainant's entire business. In other words, the pleader is

> not willing to negative the fact of reasonableness that attends the order by legal presumption. Tested by the demurrer, the averment is to be construed most strongly against the pleader."

In *B. C. R. & N. Ry. Co. v. Dey*, 82 Iowa 312, much more direct allegations were made respecting the unremunerative character of the rates and the effect of the order than in the case at bar.

Discussing these allegations and their effect, at page 343 the court says:

> "What is averred here as to the deprivation of property, and the future operations of the road at a loss, are mere conclusions as to supposed effects. It does not amount to an allegation of facts. It is the mere statement of a conclusion that the road would be operated at a loss because plaintiff would be compelled by the statute to enter into involuntary unreasonable and unprofitable contracts. The allegation in question is, indeed, a conclusion based upon another conclusion as to the supposed operations of the statute."

It will be noted it is not alleged in the bill involved herein that the effect of the changes made, even including its alleged application to interstate business, would be confiscatory, but the hypothesis is indulged in that *if* the reduction be applied to interstate business, and *if* the percentage of reduction be applied to local business in three state then confiscation would result "because such reductions would leave your orator without *any fair net earnings upon its property.*"

Under this purely imaginary state of facts appellant cannot and does not allege confiscation except as quali-

fied, and that qualification purely its opinion, without the slightest guide being given as to what in its judgment constitutes fair net earnings or what the value of the property is upon which in its opinion the fair net earnings should be based.

It is perfectly manifest that the order will not work irreparable injury, that no great loss will result thereunder, but appellant is endeavoring to invoke the jurisdiction of the court to pass merely upon a traffic question as to whether the rates fixed were reasonable in the ordinary sense of the word.

RATES EAST OF THE DALLES, LA GRANDE, BAKER BRANCH LINES.

The allegations wherein it is alleged rates to The Dalles from Portland are unreasonably low and that rates east of The Dalles, being based on the rates to The Dalles, make rates to points east of The Dalles unreasonably low and unjust are purely argumentative and set forth no facts from which it might be decreed that the rates fixed by the Commission were even unremunerative to the company.

The same criticism applies to the allegations respecting the rates on branch lines and rates between Portland and La Grande and Baker City. In the case of *Receivers & Shippers' Association v. C. N. O. & T. P. Ry. Co.*, 18 I. C. C. Rep. 440, 465, the commission says: "Commission rates are usually the same for all lines, both main line and branches."

We also refer to the allegation that the effect of the order will be to make the rates to some of the points and

places east of The Dalles less than the rate to The Dalles. As the order and tariff L-525 are both made part of the complaint, an examination of these shows how difficult it was to frame a complaint that would give any court jurisdiction on the facts.

It will be observed the reduction is based on a percentage reduction based on rate to The Dalles, which was unchanged. This necessarily would make for a trifling distance lower rates east of The Dalles than at The Dalles unless otherwise cared for, but this very situation is provided against in the order, which, as to this point reads as follows:

> "Provided the rates herein ordered may *equal* the present rates between Portland and The Dalles, where the application of the formula herein prescribed would *reduce* the rates below the said present rates between Portland and The Dalles."

Thus this fact as alleged in the complaint is negatived by the order itself.

Moreover the distance where the rates remain the same as The Dalles, as shown by the tariff L-525, is nominal, not exceeding ten or fifteen miles, and if the court knows or can take judicial knowledge of the physical characteristics of the particular section of country covered by this mileage, it could draw a fair inference as to the extremely limited amount of traffic affected.

PERCENTAGE REDUCTION.

As the order was a percentage reduction applying to all class rates and was based on the rates published in tariff L-525, the rates under which are alleged by ap-

pellant to be "reasonable and just," the so called arbitrary action of the commission had, if nothing else, the precedent set for years by the appellant in its "just and reasonable" basis of rates as set out in the tariff.

It appears from tariff there are but six branch lines of short mileage and rates thereon were generally the same as on the main line for like distances. The basis of the rates betwen Portland and La Grande and Baker City was also voluntarily established by appellant.

It would appear therefore the commission was endeavoring to follow, where it was proper, the general relation of local rates established through a series of years by the appellant itself.

Without inquiring or having the right to inquire into the reasons by which the commission arrived at their conclusions, it is sufficient to say the reduction ordered applied proportionately to all classes and to all points alike east of The Dalles and on its face was and is just, equitable and reasonable.

COMMISSION PRESUMED TO HAVE ACTED LAWFULLY.

Moreover it will be presumed the Commission acted lawfully and took into consideration all the proper facts and circumstances in arriving at its conclusion—a right it had, and its duty under the law. The difficulty an administrative body often meets with, is criticism, no matter which course it takes. If a reduction is found proper and it is based on a long continued commercial condition generally created or recognized by the carrier, it is arbitrary; if a change is made, it is revoluntionary.

Issues such as are sought to be tendered in this case have from time to time received the consideration of the courts.

Under Section 81 of the Oregon Act (Rec. 133), it is provided "All rates * * * fixed by the commission shall be in force and shall be prima facie lawful," etc.

Under a clause substantially similar to this, in the case of *Atlantic Coast Line v. Florida*, 203 U. S. 256, the Supreme Court upheld a similar provision of the law, and in discussing the question, said: "We start, therefore, with the presumption in favor of the order."

The averments of the bill cannot override the formal decision of the commission on a question of fact. The decision of the commission is entitled to respect and consideration, and, to say the least, its findings and decisions on questions of fact should be treated as *prima facie* correct.

> *Cumberland, etc., Co. v. Railroad Commission*, 156 Fed. 834, 837.

Arbitrariness of action on the part of a commission is not ground for judicial interference with its action, when such action does not appear to be arbitrary except in the sense in which many honest and sensible judgments are so.

> "They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions—impressions which may lie beneath consciousness without losing their worth. The board was created for the purpose of using its judgment and its knowledge. (Citing *Railroad Tax Cases*, 92 U. S. 575; *State v. Savage*, 65 Neb. 714, 768, 769; *Re Cruger*, 84 N. Y. 619, 621; *San Jose Gas Co. v. January*, 57 Cal. 614, 616). Within

its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The state has confided those rights to its protection and has trusted to its honor and capacity as it confides the protection of other social relations to the courts of law. Somewhere there must be an end."

Chicago, B. & Q. R. Co. v. Babcock, 204 U. S. 585, 598.

We submit the allegations as pleaded under the authorities are simply conclusions of the pleader, many of them based on hypothetical conditions, and that there is nothing therein set out which would enable the court to say the rates fixed by the commission are unreasonably low, and therefore they do not state a cause of suit.

THE COMMISSION DID NOT PASS UPON THE ENTIRE SCHEDULE OF RATES NOR FIX RATES COVERING THE ENTIRE SCHEDULE.

In view of the fact that the interposition of a court in cases of this character is based largely upon the confiscatory character of an order, it should be borne in mind the order in question deals with class rates and on movements of intrastate freight under these rates from Portland and other points on the appellant's lines of railway in Oregon, east of The Dalles only. No changes were made in the distance tariffs or in commodity, or special commodity rates of any kind. The bill of complaint itself shows the limited application of the

order, and the effect on revenue was relatively so slight appellant did not even hazard a statement in the bill as to the amount.

In view of the rulings of the courts as to the difference where a rate or a group of rates are affected as compared with changing an entire schedule, these facts are of importance.

CONFISCATION CANNOT BE PREDICATED OF A SINGLE RATE OR GROUP OF RATES, BUT MUST BE JUDGED FROM THE EFFECT ON THE ENTIRE BUSINESS DONE WITHIN THE STATE.

The *pro tanto* confiscation theory has not received judicial approval. This is so, because such a theory would result in compelling a commission, before it could make or enforce an order, to determine accurately the exact cost of carrying each particular commodity and the exact return thereon, with the unsound implication that every rate must bear its fixed percentage of cost and pay a given profit.

The doctrine has received the highest judicial approval.

Willcox v. Consol. Gas. Co., 212 U. S. 19.

Atlantic Coast Line v. North Carolina Corp. Comm., 206 U. S. 1.

Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257.

St. Louis & S. F. Ry. Co. v. Gill, 156 U. S. 649, 665.

Southern Ry. Co. v. Atlanta Stove Co., 128 Ga. 207, 288, 284.

Wisconsin, etc., R. Co. v. Jacobson, 71 Minn. 519, s. c. 179 U. S. 287, 302.

State v. Missouri Pac. R. Co., 76 Kans. 407.

Pensacola, etc., R. Co. v. Florida, 25 Fla. 310.

Morgan's R. R. Co. v. R. R. Comm., 109 La. 247.

People v. Railroad Co., 176 Ill. 512.

Chicago & Union Traction Co. v. Chicago, 199 Ill. 579.

In this connection it must be borne in mind that the Supreme Court of the United States, in deciding whether the rates fixed under the legislative authority violated the fourteenth amendment, do not rest their judgment on one set of rates for specific articles, but they take into consideration all the rates on all articles, and decide whether, as a whole, the result is unreasonable.

Smyth v. Ames, 171 U. S. 361.

In the case of the *Southern Ry. Co. v. Atlanta Stove Co., supra*, it was averred that the rates prescribed were unreasonable; that the amount earned in the transportation of the articles covered by the circular, between the points therein prescribed, would be less than the cost of service, and the effect of the enforcement of the rate would be to take property without due process of law, denying complainant the equal right and protection of the law, contrary to Section 1, Article XIV, of the amendments to the Constitution of the United States.

The court upheld the order of the Commission, citing the case of *Minneapolis & St. Louis R. R. Co. v. Minnesota*, 186 U. S. 257, and also *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362, and said amongst other things:

> "The commission fixes a schedule of rates, some commodity rates which are higher than others, and necessarily so. The entire body of rates are prescribed with respect to their interrelation. The low rate is presumably fixed with reference to the higher rate, and conversely; and a particular rate cannot be said to be unreasonable without showing it to be such when taken in connection with the whole body of rates."

They then held that the averment above set out, stating that the rates between the points therein prescribed would be less than the cost of service, did not raise an issue of fact,

> "since conceding the truth of the averment for the reasons given above, the rate therein prescribed is not alleged to be unreasonable as a part of the whole body of rates prescribed by the commission."
>
> "What the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth. * * * It can not, therefore, be admitted that a railroad corporation maintaining a highway under the authority of the state may fix its rates with a view solely to its own interests, and ignore the rights of the public."
>
> *Reagan v. Farmers L. & T. Co.*, 154 U. S. 412.
>
> *Smyth v. Ames*, 169 U. S. 466, 544, 547.

San Diego Land Co. v. National City, 174 U. S. 739.

A corporation is not entitled as of right and without reference to the interests of the public to realize a given per cent upon its capital stock. Stockholders are not the only persons whose rights are to be considered. The rights of the public are not to be ignored. The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends.

Covington & Lex. Turnpike R. Co. v. Sandford, 164 U. S. 578, 596, 597.

Jerome Hill Cotton Co. v. M., K. & T. Ry. Co., 6 I. C. C. Rep. 601.

Southern Pac. Co. v. Bartine, 170 Fed. 725.

In *Covington & L. Turnpike R. Co. v. Sandford supra*, the Court *inter alia* said:

> "We could not say that the act was unconstitutional merely because the company (as was alleged and as the demurrer admitted) could not earn more than four per cent on its capital stock. It cannot be said that a corporation operating a public highway is entitled, as of right, and without reference to the interests of the public, to realize a given per cent upon its capital stock. When the question arises whether the Legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only

persons whose rights or interests are to be considered. The rights of the public are not to be ignored. * * * In short, each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the Legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law."

MANY ELEMENTS ARE TO BE TAKEN INTO ACCOUNT IN DETERMINING THE REASONABLENESS OF A RATE.

Interstate Com. Com. v. Chic. G. W. Ry. Co., 141 Fed. Rep. 1008, 1015.

Beale & Wyman R. R. Rate Reg., Chap. XI, Sec. 814.

Imperial Coal Co. v. P. & L. E. R. R. Co., 2 I. C. C. Rep. 618.

New Orleans Cotton Exchange v. I. C. R. R. Co., 3 id., 584.

Thompson Lumber Co. v. I. C. R. R. Co., 18 id., 657.

The Interstate Commerce Commission has had occasion in a number of instances to comment upon the varying conditions that must be considered in fixing just and reasonable rates. As illustrative, we cite the following:

Imperial Coal Co. v. P. & L. E. R. R. Co., 1 I. C. C. Rep. 618.

New Orleans Cotton Exch. v. I. C. R. R. Co. et al., 3 I. C. C. Rep. 584.

Dallas Freight Bureau v. G. C. & S. F. Ry. Co. et al., 12 I. C. C. Rep. 228.

In *Noyes Amer. R. R. Rates* at page 25, the author says:

> "But all this (the fair return on the value of the property devoted to the public use) has very little to do with particular charges. The value of the railroad property is only important in determining the reasonableness of an entire schedule of rates, an inquiry which can hardly arise except when a law-made tariff is attacked as being confiscatory and, therefore, unconstitutional. The value of the property is a most remote consideration in fixing an individual rate. While each shipment should undoubtedly produce its X-millionth part of the revenue required from all shipments, X is an unknowable quantity. It would be impossible to fix even the maximum of individual rates in any such way. In the long run the schedule should bring in a fair return upon capital invested, but the necessity for such return has

practically no effect upon the charge for the particular service. We must look for other factors to determine the individual charge."

FAIR RETURN ON REASONABLE VALUE.

Subject to many qualifications it may be said generally that a fair return should be allowed upon the reasonable value of the property at the time it is being used by the public.

However, the pleadings in this case do not raise this issue. There is not one fact alleged which shows or tends to show the value or even the capitalisation of the appellant, not a statement exhibited or figure given. The net returns it is now receiving are not even referred to nor how the net returns will be affected by the order. For aught the court knows under the order appellant's net returns on the value of the property devoted to the public use may be very great.

It is unnecessary to discuss a question not in the case.

It is respectfully submitted the judgment and decree of the court below should be affirmed.

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APPENDIX A.

CHAPTER 103.

AN ACT.

To amend Section 33 of Chapter 53 of the General Session Laws of the state of Oregon for the year 1907.

Section 1. That Section 33 of Chapter 53 of the General Session Laws of the state of Oregon for the year 1907 be and the same hereby is amended to read as follows: Section 33. After the commencement of such suit the Circuit Court may for cause shown, upon application to the Circuit Court or presiding judge thereof, and upon notice to the commission and hearing, suspend or stay the operation of the order of the commission complained of until the final disposition of such suit, upon the giving of such bond or other security, and upon such conditions as the court may require; and if such order of injunction suspends the order or requirement of the commission fixing rates, then the court shall require a bond with a good and sufficient surety, conditioned that the railroad or railroads applying for such injunction shall answer for all damages caused by the delay in the enforcement of the order of the commission and all compensation for whatever sums for transportation any person or corporation shall be compelled to pay in excess of the sums such person or corporation would have been compelled to pay if the order of the commission had not been suspended; and such bond shall cover the periods transpiring from time of the issuance of any such injunction until the final determination of the question litigated. The said bond shall be executed in favor of the Railroad Commission of Oregon for the benefit

of whom it may concern, and shall be enforceable by said commission or any person interested, in an appropriate proceeding. Any person paying charges found to be excessive, shall have a claim for the excess whether paid under protest or not, and unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such railroad, or such railroad and the sureties on such bond. Claims of persons for money collected in excess of the amount payable under the rate or rates established by the commission shall be assignable in the same manner as any chose in action. No appeal to the Supreme Court shall stay the operation of any order of the commission unless the Circuit or Supreme Court shall so direct, and unless the railroad so appealing shall give a bond with like conditions and terms as that given on granting injunctions suspending an order of the commission fixing rates.

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I.

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Appendix A, Laws of 1909, chapter 199.

OREGON RAILROAD & NAVIGATION COMPANY v. CAMPBELL, ET AL., CONSTITUTING THE RAILROAD COMMISSION OF OREGON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

No. 159. Argued April 8, 9, 1912.—Decided June 16, 1913.

A state railroad commission has no power to fix interstate rates, and as in this case the state court has not construed an order of the state commission as relating to or affecting interstate rates this court does not so construe it.

Whether an order of the state commission governs particular shipments depends upon whether the traffic is interstate or intrastate, which must be determined by the facts in each case. The question cannot be determined in advance by general decree.

Minnesota Rate Cases, *ante*, p. 352, followed to effect that an order of a state railroad commission relating wholly to rates on intrastate shipments is not an unconstitutional interference with interstate commerce.

177 Fed. Rep. 318, affirmed.

THE facts, which involve the validity and constitutionality of an order made by the Railroad Commission of Oregon on April 22, 1908, prescribing maximum freight rates on railroads, are stated in the opinion.

Mr. Maxwell Evarts, with whom *Mr. W. W. Cotton* was on the brief, for appellant.

Mr. Joseph N. Teal, with whom *Mr. A. M. Crawford*, Attorney General of Oregon, and *Mr. Clyde B. Aitchison* were on the brief, for appellees:

The State has exclusive jurisdiction over its internal commerce. *Howard* v. *Ill. Cent. R. Co.*, 207 U. S. 463; *Milnor* v. *New Jersey Ry. Co.*, 17 Fed. Cas. 412; *Ex parte*

Koehler, 30 Fed. Rep. 867; *Allen* v. *O. R. & N. Co.*, 106 Fed. Rep. 265; *St. Louis & S. F. R. Co.* v. *Hadley*, 168 Fed. Rep. 317; *Woodside* v. *Tonopah & G. R. Co.*, 184 Fed. Rep. 358; *Louisville & N. R. Co.* v. *Siler*, 186 Fed. Rep. 176; *Arkansas Rate Cases*, 187 Fed. Rep. 290; *Sou. Pac. Co.* v. *Campbell*, 189 Fed. Rep. 182; *Gibbons* v. *Ogden*, 9 Wheat. 195; *United States* v. *Chicago R. Co.*, 149 Fed. Rep. 486; *Ex parte Plessy*, 45 La. Ann. 80, 87; *Sands* v. *Manistee Imp. Co.*, 123 U. S. 288; *Willamette Bridge Co.* v. *Hatch*, 125 U. S. 1; *Wabash, St. L. & P. Co.* v. *Illinois*, 118 U. S. 557; *Luxton* v. *North Bridge Co.*, 153 U. S. 525, 532; *Geer* v. *Connecticut*, 161 U. S. 519, 531; *Addyston Pipe Co.* v. *United States*, 175 U. S. 211, 247; *Erie R. R. Co.* v. *Purdy*, 185 U. S. 148; *Atlantic Coast Line* v. *Nor. Car. Com.*, 206 U. S. 1; *People* v. *Butler Street Foundry*, 201 Illinois, 236, 250; *Attorney General* v. *Old Colony R. R. Co.*, 160 Massachusetts, 62; *Chicago Ry. Co.* v. *R. R. Comm.*, 173 Indiana, 469; *Central Trust Co.* v. *Railroad Co.*, 101 N. Y. Supp. 837; *Larabee* v. *Mo. Pac. R. Co.*, 74 Kansas, 808; *State* v. *Jack*, 69 Kansas, 387; *Beardsley* v. *New York, L. E. & W. R. Co.*, 15 App. Div. 251; *Purdy* v. *Erie R. Co.*, 162 N. Y. 42; *N. J. Fruit Exch.* v. *Railroad Co.*, 2 I. C. C. 84, 86; *Hastings* v. *Railroad Co.*, 11 I. C. C. 675, 682; *Farmers' Club* v. *Railroad Co.*, 12 I. C. C. 351.

Railroads are subject as to their state business to state regulation which may be exerted directly by the legislative authority or by administrative bodies, endowed with power to that end. Calvert, Regulation of Commerce, p. 75; Beale & Wyman, Railroad Rates, § 1307; Noyes, American Railroad Rates, 206; Cooke on Commerce Clause, § 23; *Chicago R. Co.* v. *Iowa*, 94 U. S. 155; *Wabash, St. L. & P. R. Co.* v. *Illinois*, 118 U. S. 557; *Georgia R. R. Co.* v. *Smith*, 128 U. S. 174; *C., M. & St. P. R. Co.* v. *Minnesota*, 134 U. S. 418; *Chicago Ry. Co.* v. *Wellman*, 143 U. S. 339; *Covington Bridge Co.* v. *Kentucky*, 154 U. S. 204;

Reagan v. *Mercantile Trust Co.*, 154 U. S. 413; *St. Louis* v. *Gill*, 156 U. S. 649; *Smyth* v. *Ames*, 169 U. S. 466; *Dinsmore* v. *Southern Exp. Co.*, 183 U. S. 115; *McLean* v. *Denver & R. G. Ry. Co.*, 203 U. S. 38, 49; *Ware* v. *Mobile Co.*, 209 U. S. 405; *Gulf, Col. & S. F. Ry. Co.* v. *Texas*, 204 U. S. 403; *Atlantic Coast Line* v. *Nor. Car. Corp. Com.*, 206 U. S. 1, 19; *General Oil Co.* v. *Crain*, 209 U. S. 211; *State* v. *Mo. Pac. Ry. Co.*, 76 Kansas, 467 (aff'd 216 U. S. 262); *Southern Ry. Co.* v. *Hunt*, 42 Ind. App. 90; *Commissioner* v. *Wabash Ry. Co.*, 123 Michigan, 669 (aff'd 126 Michigan, 113); *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362, 393; *Stone* v. *Farmers' L. & T. Co.*, 116 U. S. 307; *Houston & T. C. R. Co.* v. *Mayes*, 201 U. S. 321; *McNeill* v. *Southern R. Co.*, 202 U. S. 543; *Mo., K. & T. R. Co.* v. *Haber*, 169 U. S. 613, 635; *Chicago &c. R. Co.* v. *Solan*, 169 U. S. 133; *Penna. R. Co.* v. *Hughes*, 191 U. S. 477; *Northern Securities Case*, 193 U. S. 394; *Oklahoma* v. *Atchison, T. & S. F. R. Co.*, 220 U. S. 277; *Oklahoma* v. *Chicago & Rock Island Ry.*, 220 U. S. 302.

A state law regulating a subject of Federal jurisdiction would be void and a Federal law regulating a subject of state jurisdiction is also void. *Trade Mark Cases*, 100 U. S. 82; *Ill. Cent. R. Co.* v. *McKendree*, 203 U. S. 514; *Howard* v. *Illinois Cent. R. Co.*, 207 U. S. 463.

The Federal Government has no authority over transportation which begins and ends in a particular State. *Baer Bros.* v. *Mo. Pac. R. Co.*, 13 I. C. C. 329; *Hussey* v. *C., R. I. & P. Ry. Co.*, 13 I. C. C. 366; *Haines* v. *C., R. I. & P. Ry. Co.*, 13 I. C. C. 214; *Chandler Cotton Co.* v. *Fort Smith Ry. Co.*, 13 I. C. C. 473; *Morgan* v. *M., K. & T. Ry. Co.*, 12 I. C. C. 525; *Montgomery Freight Bureau* v. *Western Ry.*, 14 I. C. C. 150; *Marshall Oil Co.* v. *C. & N. W. R. Co.*, 14 I. C. C. 210; *Lincoln Commercial Club* v. *C., R. I. & P. Co.*, 13 I. C. C. 319; *Saunders & Co.* v. *Southern Exp. Co.*, 18 I. C. C. 415, 422; *Gulf, Colo. & S. F. R. Co.* v. *Texas*, 204 U. S. 403; *Coe* v. *Errol*, 116 U. S. 525; *Michigan*

Buggy Co. v. *G. R. & I. Ry. Co.*, 15 I. C. C. 297; *Howard* v. *Ill. Cent. R. Co.*, 207 U. S. 463, 502; *Wells-Higman Co.* v. *Grand Rapids & R. Co.*, 19 I. C. C. 487.

The interference with interstate commerce that is forbidden is direct, not that which is remote or indirect. *Munn* v. *Illinois*, 94 U. S. 113; *Stone* v. *Farmers' L. & T. Co.*, 116 U. S. 307; *Wabash, St. L. & P. R. Co.* v. *Illinois*, 118 U. S. 557; *Budd* v. *New York*, 143 U. S. 517; *N. Y., L. E. & W. R. Co.* v. *Pennsylvania*, 158 U. S. 439; *Louisville & N. R. Co.* v. *Kentucky*, 161 U. S. 677; *West. Un. Tel. Co.* v. *James*, 162 U. S. 650; *Hennington* v. *Georgia*, 163 U. S. 299; *Chicago Ry. Co.* v. *Solan*, 169 U. S. 133; *Lake Shore Ry. Co.* v. *Ohio*, 173 U. S. 285; *Wisconsin Ry. Co.* v. *Jacobson*, 179 U. S. 287; *Louis. & Nash. R. R. Co.* v. *Kentucky*, 183 U. S. 503; *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543; *Gulf, Colo. & S. F. Ry. Co.* v. *Texas*, 204 U. S. 403; *Ware* v. *Mobile Co.*, 209 U. S. 405; *New York* v. *Hesterberg*, 211 U. S. 31; *Mo. Pac. Ry. Co.* v. *Larabee Flour Mills Co.*, 211 U. S. 612; *Louis. & Nash. R. R. Co.* v. *Kentucky*, 183 U. S. 503, 518; *Alabama & V. Railway Co.* v. *Mississippi R. R. Comm.*, 203 U. S. 496; *Covington Bridge Co.* v. *Kentucky*, 154 U. S. 204, 209; *Houston & Tex. Cent. Ry. Co.* v. *Mayes*, 201 U. S. 321, 328; *Penna. R. Co.* v. *Hughes*, 191 U. S. 477, 488.

Interference by the State with interstate commerce being unlawful will not be presumed. *Chicago I. & L. Ry. Co.* v. *Railroad Commission*, 95 N. E. Rep. (Ind.) 364, 368; *N. Y. Cent. R. R. Co.* v. *Int. Comm. Comm.*, 168 Fed. Rep. 131; *Pittsburg R. R. Co.* v. *Railroad Comm.*, 171 Indiana, 189; *Chicago R. R. Co.* v. *Railroad Comm.*, 173 Indiana, 469; *Stone* v. *Farmers' L. & T. Co.*, 116 U. S. 307; *Burlington C. R. & N. R. Co.* v. *Dey*, 82 Iowa, 312, 339; *Howard* v. *Ill. Cent. R. Co.*, 207 U. S. 463, 509.

When the charge and the actual transportation are confined to the limits of the territory of the State it is not interstate commerce and is subject to state control. *Mor-*

gan v. *M., K. & T. Ry. Co.*, 12 I. C. C. 525, 528; *Montgomery Freight Bureau* v. *Western Ry. of Ala.*, 14 I. C. C. 150; *Marshall Oil Co.* v. *C. & N. W. Ry. Co.*, 14 I. C. C. 210; *Kurtz* v. *Penna. Co.*, 16 I. C. C. 410; *Savannah Bureau* v. *Charleston & Savannah R. R. Co.*, 7 I. C. C. 601; *Gulf, Colo. & S. F. R. Co.* v. *Texas*, 204 U. S. 403; *Dobbs* v. *L. & N. R. Co.*, 18 I. C. C. 210; *Southern Ry. Co.* v. *Hunt*, 83 N. E. Rep. (Ind.) 721; *Wabash, St. L. & Pac. R. Co.* v. *Illinois*, 118 U. S. 557; *Coe* v. *Errol*, 116 U. S. 517; *Brown* v. *Houston*, 114 U. S. 622; *State* v. *Engle*, 34 N. J. L. 425; *State* v. *Carrigan*, 39 N. J. L. 35; *The Daniel Ball*, 10 Wall. 557; *General Oil Co.* v. *Crain*, 209 U. S. 211, 228.

The law requires all rates to be reasonable, state as well as interstate, and if a carrier uses a local rate in any way as a factor in arriving at an interstate rate it does so knowingly and subject to state control. *Reagan* v. *Mercantile Trust Co.*, 154 U. S. 413; *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362; *Ames* v. *Un. Pac. R. R. Co.*, 64 Fed. Rep. 165, 171; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 82; Beale & Wyman, R. R. Rate Regulation, § 661.

The reasonableness of a local rate ought not to be measured by an interstate rate over the same line where part of the haul was within and part was without the State. *Louis. & Nash. R. Co.* v. *Eubank*, 184 U. S. 27.

A rate is a definite charge for a whole service. *Gulf, Colo. & S. F. R. Co.* v. *Texas*, 204 U. S. 403; *Southern Ry. Co.* v. *Hunt*, 42 Ind. App. 90; *State* v. *Mo. Pac. Ry. Co.*, 76 Kansas, 467; *Coe* v. *Errol*, 116 U. S. 517; *Texas &c. R. Co.* v. *Sabine Tram. Co.*, 121 S. W. Rep. 256; *State* v. *Southern Pacific Co.*, 23 Oregon, 424; *Augusta Brokerage Co.* v. *Cent. of Ga. R. R. Co.*, 5 Ga. App. 187.

Traffic is either state or interstate. *Trammel* v. *Clyde Steamship Co.*, 4 I. C. C. 120, 139; *Wells-Higman Co.* v. *Grand Rapids &c. I. Ry. Co.*, 19 I. C. C. 487; *Dobbs* v. *L. & N. R. Co.*, 18 I. C. C. 210.

A rate fixed by a State which indirectly affects an interstate rate is not an unconstitutional interference with interstate commerce. *Mo. Pac. R. Co.* v. *Kansas*, 216 U. S. 262, 283; *Louisville & N. R. Co.* v. *Siler*, 186 Fed. Rep. 176, 200; *Arkansas Rate Cases*, 187 Fed. Rep. 290, 302; *Gibbons* v. *Ogden*, 6 Wheat. 448; *Employers' Liability Cases*, 207 U. S. 463, 493; *Addyston Pipe Co.* v. *United States*, 175 U. S. 211, 231; *State* v. *Nor. Pac. Ry. Co.*, 120 N. W. Rep. (N. D.) 869; *Nor. Pac. Ry. Co.* v. *North Dakota*, 216 U. S. 579; *L. & N. R. Co.* v. *Kentucky*, 183 U. S. 503; *Perkins* v. *Nor. Pac. Ry. Co.*, 155 Fed. Rep. 453; *Woodside* v. *Tonopah & G. R. Co.*, 184 Fed. Rep. 358; *So. Pac. Co.* v. *Campbell*, 189 Fed. Rep. 182; *Shepard* v. *Nor. Pac. Ry. Co.*, 184 Fed. Rep. 765.

A through rate may properly be lower than the sum of the locals. *Minn. & St. L. R. Co.* v. *Minnesota*, 186 U. S. 257; *Brabham* v. *Atlantic C. L. R. Co.*, 11 I. C. C. 464; *Morgan* v. *M., K. & T. Ry. Co.*, 12 I. C. C. 525; *Montgomery Freight Bureau* v. *Western Ry.*, 14 I. C. C. 150; *Marshall Oil Co.* v. *C. & N. W. R. Co.*, 14 I. C. C. 210.

Courts in cases of doubt will not declare a law unconstitutional. *Fletcher* v. *Peck*, 6 Cranch, 87, 128; *United States* v. *Coombs*, 12 Pet. 72, 76; *Sinking Fund Cases*, 99 U. S. 700, 718; *Nicol* v. *Ames*, 173 U. S. 509, 514; *Buttfield* v. *Stranahan*, 192 U. S. 470, 492; *Interstate Ry. Co.* v. *Massachusetts*, 207 U. S. 79, 88.

Other state acts have been held constitutional. *Railroad Commissioners* v. *Pensacola & A. R. Co.*, 24 Florida, 417, 472; *Storrs* v. *Pensacola & A. R. Co.*, 29 Florida, 617; *Georgia R. Co.* v. *Smith*, 70 Georgia, 694; *S. C.*, 71 Georgia, 863; *Sou. Ind. Ry. Co.* v. *Hunt*, 42 Ind. App. 90; *Sou. Ind. Ry. Co.* v. *Railroad Commission*, 172 Indiana, 113; *Chicago I. & L. R. Co.* v. *Railroad Commission*, 95 N. E. Rep. (Ind.) 364; *State* v. *Mo. Pac. R. Co.*, 76 Kansas, 467, 481; *Michigan C. R. Co.* v. *Railroad Commission*, 160 Michigan, 355, 366; *State* v. *Chicago, M. & St. P. R. Co.*, 38

Minnesota, 281; *State* v. *Great Nor. Ry. Co.*, 100 Minnesota, 445, 476; *Stone* v. *Yazoo & M. V. R. Co.*, 62 Mississippi, 607, 645; *In re Railroad Commission*, 16 Nebraska, 679; *Trustees* v. *Saratoga Gas Co.*, 191 N. Y. 123, 131; *Atlantic Exp. Co.* v. *Wilmington R. R. Co.*, 111 Nor. Car. 463, 472; *Minn. &c. Co.* v. *Railroad Commission*, 136 Wisconsin, 146; *State* v. *Railroad Commission*, 52 Washington, 17, 32.

Legislative power is not unconstitutionally delegated by similar acts. *Miller* v. *New York*, 109 U. S. 385; *Field* v. *Clark*, 143 U. S. 649, 680, 691, 692; *Buttfield* v. *Stranahan*, 192 U. S. 470; *Union Bridge Co.* v. *United States*, 204 U. S. 364, 371; *St. Louis, I. M. & S. R. Co.* v. *Taylor*, 210 U. S. 281, 287; *Oceanic Steam Nav. Co.* v. *Stranahan*, 214 U. S. 320, 339; *Monongahela Bridge Co.* v. *United States*, 216 U. S. 177, 192; *United States* v. *Grimaud*, 220 U. S. 506; *Hannibal Bridge Co.* v. *United States*, 221 U. S. 194; *Int. Comm. Comm.* v. *Brimson*, 154 U. S. 447, 474; *Int. Comm. Comm.* v. *Cincinnati &c. R. Co.*, 167 U. S. 479, 494, 506; *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 438, 448; *Int. Comm. Comm.* v. *Ill. Cent. R. Co.*, 215 U. S. 452; *Balt. & Ohio R. R. Co.* v. *United States*, 215 U. S. 481; *Int. Com. Comm.* v. *C., R. I. & P. Ry. Co.*, 218 U. S. 88; *Int. Com. Comm.* v. *C., B. & Q. Ry. Co.*, 218 U. S. 113; *Sou. Pac. Co.* v. *Int. Com. Comm.*, 219 U. S. 433; *Del., L. & W. R. Co.* v. *Int. Com. Comm.*, 220 U. S. 235.

The action of the commission has the effect of law. *Knoxville* v. *Water Co.*, 212 U. S. 1; *Prentis* v. *Southern R. Co.*, 211 U. S. 210; *Honolulu Rapid Transit Co.* v. *Hawaii*, 211 U. S. 282; *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Atlantic Coast Line* v. *Nor. Car. Corp. Comm.*, 206 U. S. 1; *Tex. & Pac. Ry. Co.* v. *Mugg*, 202 U. S. 242; *Tex. & Pac. Ry. Co.* v. *Cisco Oil Co.*, 204 U. S. 449.

The power of the legislature is absolute within the limits of the Federal and state constitutions. Cooley, Const. Lim., 7th ed. 236, 241, 257; *St. L., I. M. & S. R. Co.*

v. *Taylor*, 210 U. S. 281, 295; *Int. Comm. Comm.* v. *Ill. Cent. R. Co.*, 215 U. S. 452, 470.

A rate made under legislative authority is presumptively lawful. *Munn* v. *Illinois*, 94 U. S. 113, 123; *Ruggles* v. *Illinois*, 108 U. S. 536, 541; *Sweet* v. *Rechel*, 159 U. S. 380, 392; *Chicago &c. R. Co.* v. *Wellman*, 143 U. S. 339, 344; *San Diego Land Co.* v. *National City*, 174 U. S. 739, 754; *Chicago &c. R. Co.* v. *Tompkins*, 176 U. S. 167, 173; *Louis. & Nash. R. R. Co.* v. *Kentucky*, 183 U. S. 503, 511; *Knoxville* v. *Water Co.*, 212 U. S. 1, 8; *Willcox* v. *Cons. Gas Co.*, 212 U. S. 19.

The legislature may exercise its rate-making power through a commission. Noyes, Am. Railroad Rates, p. 206; 2 Redfield, Railways, 6th ed., p. 606; *Railroad Co.* v. *Cent. of Ga. Ry. Co.*, 170 Fed. Rep. 225.

No rate can be said, as a matter of law, to be unreasonable of itself. *Ill. Cent. R. Co.* v. *Int. Com. Comm.*, 206 U. S. 441; *Tex. & Pac. R. Co.* v. *Int. Com. Comm.*, 162 U. S. 197; *C., N. O. & T. P. R. Co.* v. *Int. Com. Comm.*, 162 U. S. 184.

The commission is an expert body. *Smyth* v. *Ames*, 169 U. S. 466, 527; *East Tenn. V. & G. R. Co.* v. *Int. Comm. Comm.*, 99 Fed. Rep. 52, 64; *Steenerson* v. *G. Nor. Ry. Co.*, 69 Minnesota, 353, 377; *Minn., St. P. &c. Ry. Co.* v. *Railroad Comm.*, 136 Wisconsin, 146.

In passing upon the reasonableness and justice of a rate the conclusions of fact by the commission are conclusive. *Ill. Cent. R. R. Co.* v. *Int. Comm. Comm.*, 215 U. S. 452; *Balt. & Ohio R. R. Co.* v. *United States*, 215 U. S. 481; *So. Pac. Co.* v. *Int. Comm. Comm.*, 219 U. S. 433; *Del., L. & W. R. Co.* v. *Int. Comm. Comm.*, 220 U. S. 235; *Int. Comm. Comm.* v. *Chicago &c. R. Co.*, 218 U. S. 88, 110; *Knoxville* v. *Water Co.*, 212 U. S. 1; *Willcox* v. *Cons. Gas Co.*, 212 U. S. 19; *Monongahela Bridge Co.* v. *United States*, 216 U. S. 177; *Ill. Cent. R. R. Co.* v. *Int. Comm. Comm.*, 206 U. S. 441, 454; *Cincinnati, H. & D. R. Co.* v.

Int. Comm. Comm., 206 U. S. 142, 154; *Cincinnati, N. O. & T. P. R. Co.* v. *Int. Comm. Comm.*, 162 U. S. 184; *Louis. & Nash. R. Co.* v. *Behlmer*, 175 U. S. 648; *Steenerson* v. *Gt. Nor. Ry. Co.*, 69 Minnesota, 353, 375; *State* v. *C., M. & St. P. Ry. Co.*, 38 Minnesota, 281, 298; *Foreman* v. *Board*, 64 Minnesota, 371; *State* v. *Young*, 29 Minnesota, 474; *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362; *Minn., St. P. &c. Ry. Co.* v. *Railroad Comm.*, 136 Wisconsin, 146; *Chi., R. I. & P. R. Co.* v. *Railway Comm.*, 85 Nebraska, 818, 824; *Spring Valley Water Works* v. *San Francisco*, 82 California, 286, 306; *Jacobson* v. *Wisconsin Ry. Co.*, 71 Minnesota, 519, 529; *Morgan's Ry. Co.* v. *Railroad Comm.*, 109 Louisiana, 247, 265; *In re Amsterdam*, 33 N. Y. Supp. 1009; *People* v. *Railroad Comm.*, 53 App. Div. (N. Y.) 61; *Pensacola R. R. Co.* v. *State*, 25 Florida, 310; *Storrs* v. *Pensacola Ry. Co.*, 29 Florida, 617; *Railroad Comm.* v. *Seaboard Air Line*, 48 Florida, 129.

It is presumed the commission acted lawfully. *Atlantic Coast Line* v. *Florida*, 203 U. S. 256; *Cumberland Co.* v. *Railroad Comm.*, 156 Fed. Rep. 834; *Railroad Tax Cases*, 92 U. S. 575; *State* v. *Savage*, 65 Nebraska, 714, 768; *Re Cruger*, 84 N. Y. 619; *San Jose Gas Co.* v. *January*, 57 California, 614; *Chicago, B. & Q. R. Co.* v. *Babcock*, 204 U. S. 585, 598.

Confiscation cannot be predicated of a single rate or group of rates, but must be judged from the effect on the entire business done within the State. *Willcox* v. *Cons. Gas Co.*, 212 U. S. 19; *Atlantic Coast Line* v. *Nor. Car. Corp. Comm.*, 206 U. S. 1; *Minn. & St. L. R. Co.* v. *Minnesota*, 186 U. S. 257; *St. Louis & S. F. Ry. Co.* v. *Gill*, 156 U. S. 649, 665; *Southern Ry. Co.* v. *Atlanta Stove Co.*, 128 Georgia, 207, 233; *Wisconsin &c. R. Co.* v. *Jacobson*, 71 Minnesota, 519; *State* v. *Mo. Pac. R. Co.*, 76 Kansas, 467; *Pensacola &c. R. Co.* v. *Florida*, 25 Florida, 310; *Morgan's R. Co.* v. *Railroad Comm.*, 109 Louisiana, 247; *People* v. *Railroad Co.*, 176 Illinois, 512; *Union Traction Co.* v. *Chicago*, 199

Illinois, 579; *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362, 412; *Smyth* v. *Ames*, 169 U. S. 466, 544; *San Diego Land Co.* v. *National City*, 174 U. S. 739; *Covington Turnpike Co.* v. *Sandford*, 164 U. S. 578, 596; *Jerome Hill Cotton Co.* v. *M., K. & T. Ry. Co.*, 6 I. C. C. 601; *So. Pac. Co.* v. *Bartine*, 170 Fed. Rep. 725.

Many elements are to be taken into account in determining the reasonableness of a rate. *Int. Comm. Comm.* v. *Chic. G. W. Ry. Co.*, 141 Fed. Rep. 1003, 1015; Beale & Wyman, R. R. Rate Regulation, c. XI, § 314; *Imperial Coal Co.* v. *P. & L. E. R. Co.*, 2 I. C. C. 618; *New Orleans Cotton Exch.* v. *I. C. R. Co.*, 3 *id.* 534; *Thompson Lumber Co.* v. *I. C. R. Co.*, 13 *id.* 657; *Dallas Freight Bureau* v. *G., C. & S. F. Ry. Co.*, 12 *id.* 223; Noyes, Am. R. R. Rates, 25.

A carrier may complain of a reduction of rates by the commission so far as it affects its revenues; but cannot complain that discrimination results to shippers or trade centres from such reduction. *Int. Comm. Comm.* v. *C., R. I. & P. R. Co.*, 218 U. S. 88, 109; *Clark* v. *Kansas City*, 176 U. S. 114; *Smiley* v. *Kansas*, 196 U. S. 447.

MR. JUSTICE HUGHES delivered the opinion of the court.

This suit was brought to restrain the enforcement of an order of the Railroad Commission of Oregon, made April 22, 1908, prescribing maximum freight rates between Portland and other points on the complainant's lines, within the State, east of The Dalles. Demurrers to the bill, and to the amended bill, were sustained. 173 Fed. Rep. 957; 177 Fed. Rep. 318. And from the final decree dismissing the bill the complainant brings this appeal.

The arguments in support of the appeal are addressed to the question whether the order of the commission was an unconstitutional interference with interstate commerce.

It appears from the bill, and from the order of the commission which was made a part of the bill, that the Portland Chamber of Commerce had complained of the complainant's freight tariff and had petitioned the commission to establish reasonable rates for transportation from Portland to points in Oregon. After hearing, the commission found that the existing rates were unreasonably high, ordered their discontinuance and determined the just and reasonable rates to be charged in their stead.

It is insisted that the order applied to interstate traffic, that is, to traffic originating outside the State and still moving, on its transportation from Portland to other points in the State, in interstate commerce. The court below did not so construe the order, and we do not so construe it. The Railroad Commission of Oregon had no power to fix rates for interstate transportation, or any part of it, and we find no ground for the conclusion that it attempted to do so. The order must be taken as applicable solely to intrastate transportation. And, in this view, so far as the averments of the bill attack the order as one which by its terms relates to property transported in interstate commerce, they are insufficient to entitle the complainant to relief.

Whether the order governs particular shipments must depend on the facts of each case, that is, upon the question whether the traffic is interstate or intrastate. If it were sought to compel the application of the intrastate rate to goods which were properly to be regarded as moving in interstate commerce, the complainant would have its remedy. But it would be necessary to show the actual conditions and that the order, although valid in its proper operation, was being misapplied with respect to particular transactions. The bill failed to make a case of this sort. Upon this point the court below said: "If the order be valid, as it is held to be, then all shipments or commerce which are intrastate in character must be controlled by

the order; all that are not are not affected by it. If question arises as to any particular shipment or any particular commodity to be moved, or in process of transportation, it might be settled by carrying the matter to the commission; or, if the commission unlawfully exacts the state rate upon interstate traffic, I see no reason why it may not be enjoined in any court of competent jurisdiction. These special cases must necessarily be determined as they arise, as it is impossible, by a general decree, to determine in advance what specific commodities and the transportation thereof constitute interstate and what intrastate commerce." 177 Fed. Rep. 318, 320.

We are of the opinion that the ruling was right.

Assuming that the order applies exclusively to intrastate transportation, the question with respect to asserted interference with interstate commerce by reason of the relation of intrastate rates to interstate rates is essentially the same as that presented in the *Minnesota Rate Cases*, *ante*, p. 352, and the same conclusion must be reached.

Other questions are raised by the assignments of error, but they are not pressed in argument and require no discussion.

Decree affirmed.